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Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities Under RCRA (Resource Conservation and Recovery Act), Subtitle C, Section 3004; Manifest System, Recordkeeping, and Reporting (40 CFR 264 and 265, Subpart E)

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BACKGROUND DOCUMENT

STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES UNDER RCRA, SUBTITLE C, SECTION 3004

Manifest System, Recordkeeping, and Reporting
(40 CFR 264 and 265, Subpart E)

This document (ms. 1941.8) provides background information and support for EPA's hazardous waste regulations

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I. INTRODUCTION

This document provides background information, rationale, and supporting data for standards for manifest system compliance, recordkeeping, and reporting at hazardous waste treatment, storage, and disposal facilities. These regulations (40 CFR Part 264, Subpart E) partially implement Section 3004 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). This document also covers interim status standards on the same subjects (40 CFR Part 265, Subpart E).

1. RCRA Mandate

In Section 3004 of RCRA, Congress specifically required EPA to write regulations respecting the maintenance of records of all hazardous wastes treated, stored, or disposed of and the manner of such treatment, storage or disposal, as well as satisfactory reporting, and compliance with the manifest system established under Section 3002 of RCRA, as follows:

> STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES
>
> Section 3004. Not later than eighteen months after the date of enactment of this section, and after the opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this Subtitle, as may be necessary to protect human health and the environment. Such standards shall include, but need not be limited to, requirements respecting--

(1) maintaining records of all hazardous wastes identified or listed under this title which are treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of; and,

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in Section 3002 (5).

In the legislative history of RCRA (Pub. L. 94-580), the House Committee on Interstate and Foreign Commerce expressed its clear awareness that important information about hazardous waste is unavailable.

> One of the major problems to be addressed in the hazardous waste area is the lack of information concerning the components, volumes and sources of hazardous waste.[1]

The Committee also stated:

> To date there has been no survey or other wide ranging investigation of the sources of hazardous or potentially hazardous waste generation or disposal.[2]

The Committee indicated the significance of this lack of information:

> As a result, little is known about the actual volume of hazardous waste being generated, the geographical distribution of the generators or the extent to which hazardous wastes are transported. Neither does the Committee or the EPA know where much of the waste which is clearly hazardous is being disposed of.
>
> To gain the information needed to adequately plan for the disposal of hazardous waste and to ensure its proper disposal, it is imperative to know what is being generated, where and by whom.[3]

The Committee then proceeded to identify who should know what is being generated, where, and, by whom. The Committee explicitly states that in exchange for the freedom from restrictions on the generation of waste, and hence interference with production, the waste

generator is expected to provide information as needed for the planning of hazardous waste disposal, and as needed to ensure its proper disposal.[4]

In summary, the generator of hazardous waste is to supply information to the EPA through periodic reports, and to transporters and disposers through the manifest and labeling of containerized hazardous waste.

> Through this process [of providing information] the Administrator will have at hand information on the location and volume of wastes being generated. Transporters of the wastes will know what the cargo contains, its general characteristics, and will have a warning as to its nature. Further, those who receive such wastes for treatment, storage, or disposal will have accurate knowledge of the characteristics and constituents of such waste prior to working with such wastes.[5]

The legislative history also provides an explanation of Congressional intent as to the meaning of the term "compliance with the manifest system" in Section 3004(2).

> Inherent in the manifest system it is expected that there will be developed a process whereby those receiving hazardous wastes will notify the shipper of such wastes that such wastes have been received so that the system will be self-policing....
>
> The manifest system finds its completion when such wastes are received by those who treat, store or dispose of such wastes and notices of receipt of such solid wastes are sent to the generator.[6]

Thus, a clear requirement for disposers under the manifest system is sending the notice of receipt of hazardous waste to the generator.

A further requirement of the manifest system to inform the disposer is explained in the legislative history of RCRA.

Further, the disposal facilities will be informed of the nature of the waste by the manifest document and the waste labeling.7

A capsule description of the manifest system provides support for the use of the manifest as a record at disposal facilities.

Originating with the generators, moving through the transportation stage, registered at an approved disposal site for the treatment, storage, or disposal of such hazardous waste and returned to the generator, the manifest will give to each party in the chain of handling a record.8

In addition, the use of this manifest and record as an enforcement tool is clearly intended by Congress.

It will also provide the Administrator with a clear record of the movement and final disposition of waste originating at any specific site. Such records will greatly assist the Administrator, or state, where appropriate, in its enforcement of the hazardous waste regulations.9

Within RCRA, much discretion as to reporting has been given to the Administrator of EPA by the term "satisfactory reporting" in Section 3004(2). The legislative history supports the contention that such reporting shall be satisfactory to the Administrator.

The requirements shall include periodic reporting to the Administrator.10

2. Definitions

The following statutory definition of "manifest" given in Section 1004 of RCRA is pertinent to establishing standards for manifests, recordkeeping, and reporting under Section 3004:

"The term 'manifest' means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

In addition, the following terms which are defined in Part 260 are key to this area of regulation:

> "EPA identification number" means the number assigned by EPA to each generator, transporter, and treatment, storage, or disposal facility.
>
> "Facility" means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, and or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them).
>
> "Movement" means that hazardous waste transported to a facility in an individual vehicle.
>
> "On-site" means the same or geographically contiguous property which may be divided by public or private right(s)-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right(s)-of-way. Non-contiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

The analysis of comments on the proposed versions of the definitions given in Part 260, and the rationale for the modifications made to these definitions in the final rules, is contained in the background document entitled "Definitions."

II. RATIONALE FOR NEED TO REGULATE

1. Damage Incidents

Numerous instances of damage to human health and the environment and the management of wastes have been documented by the EPA.[11] Selected incidents were described in a U.S. EPA report to Congress in 1974[12] and in the Legislative History to RCRA.[13] Analysis and further documentation of selected incidents are contained or referenced in background documents supporting other RCRA Subtitle C regulations (e.g., see background document for Subparts C and D, Preparedness and Prevention, Contingency Plan, and Emergency Response[14]).

In general, reporting and recordkeeping requirements help to assure that the hazardous waste regulations are followed by the regulated community by providing the enforcement agency with sufficient information to monitor and determine compliance.

In certain instances, recordkeeping and reporting can be essential to prompt, proper, and effective response to emergency events such as spills, fires, and explosions, or releases to air, land, surface water, and ground water. The existence of records can allow the accurate assessment of the hazard posed to human health and may guide proper responses earlier than would be possible otherwise.

2. Other Bases

Increased protection of human health and the environment will result from periodic review by EPA of waste information provided to

EPA by facilities in reports. Oversight of waste within a State or region will be enhanced by reporting.

EPA examined precedents established by States that have manifest, reporting, and recordkeeping requirements. These were discussed in the RCRA Section 3002 draft background document of December 15, 1978.[15] Existing and proposed State regulations have been reviewed and abstracted in Appendix I to this document. Many of the concepts and methods used by States are incorporated in EPA's final regulations.

III. SYNOPSIS OF PROPOSED REGULATIONS

Proposed RCRA Section 250.43-5, published on December 18, 1978, specified the manifest, recordkeeping, and reporting requirements for owners and operators of off-site hazardous waste facilities. These requirements prescribed the final steps in the manifest system, established in the Section 3002 rules, which tracks hazardous waste from its origin with the generator through its trip with the transporter to disposition at a treatment, storage, or disposal facility. This system is central to the cradle-to-grave management system for hazardous waste.

Under the proposed rules, owners or operators of facilities that accepted waste accompanied by a manifest for treatment, storage, or disposal were required to sign and return the manifest to the generator within 30 days, and make annual reports to the Regional Administrator summarizing information on the manifest, and from other sources, including the types and amounts of waste received, their source, and other information.

Under the proposed rules, all facility owners or operators were required to keep records of how waste was treated, stored, or disposed. Also, records were to be kept on the location of waste, waste analyses, inspections, operating conditions, personnel training, monitoring results, and incidents of damage to human health or the environment.

In addition to the annual report mentioned above, owners or operators were required to make quarterly reports to the EPA Regional Administrator of ground-water monitoring data and wastes received without a manifest. Further, all facility owners or operators were required to immediately report incidents, such as fires, explosions, discharges, and problems detected via monitoring, to the Regional Administrator.

[Comment: Reporting requirements for facility owners or operators that generate and treat, store, or dispose of their waste at the same location (i.e., on-site) were specified in the proposed Section 3002 rules. This caused some confusion. Consequently, reporting requirements applicable to the owners or operators of both on-site and off-site facilities are consolidated in the final Section 3004 rules.]

IV. COMMENT ANALYSIS AND RATIONALE FOR CHOSEN ACTION

The Agency received numerous comments from many sources on the proposed rules for manifests, recordkeeping, and reporting. Some comments raised general issues applicable to the entire Subpart. These general issues are discussed first, followed by analysis of comments on each specific section of the proposed rule in turn.

A. General Issues

1. Confidentiality

a. Synopsis of Proposed Regulations

In the proposed hazardous waste regulations, the Agency expressed its basic stance towards confidentiality in §250.27, which stated that all information provided in connection with the manifest and reporting sections must be made available to any person to the extent and in the manner authorized by Section 3007(b) of the Act, the Freedom of Information Act (FOIA, 5 U.S.C. Section 552), and the EPA regulations adopted to implement FOIA (40 CFR Part 2). This general provision applied also to the recordkeeping and reporting systems under Section 3004 of the proposed regulations because they were designed to use information supplied on the manifest as the data base to be compiled. However, this was not stated explicitly in the Section 3004 regulations.

b. Rationale for Proposed Regulations

The Agency included §250.27 in the proposed rules in response to suggestions (made during public review of earlier drafts of the

regulations) that the confidentiality issue should be addressed in the regulations. Proposed §250.27 was essentially a restatement of Congressional intent, as expressed in RCRA Section 3007(b) and the Freedom of Information Act, and established EPA policy, as expressed in 40 CFR Part 2, regarding public disclosure of information. A similar provision was not included in the Section 3004 regulations because the Agency believed it would be redundant, since the same data base was involved in both cases.

c. Comment Analysis and Response

Issue #1: Public Disclosure Statement

Commenters argued that EPA should clearly express its intent to maximize public disclosure of information in the Section 3004 regulations.

Response:

The Agency agrees in principle that the public should have access to information regarding the RCRA hazardous waste regulatory program, subject to Congressional guidance in RCRA Section 3007(b) and the limitations of other applicable statutes. Further, the Agency agrees that it was not clear that proposed §250.27 also applied to the Section 3004 rules. However, it is duplicative to state EPA's policy in every regulation promulgated under RCRA. Consequently, the Agency has decided to include a regulation concerning confidentiality of information in Part 260 of the final rules, which covers general matters applicable to all aspects of the hazardous

waste management system. Thus, the Agency's policy is clearly stated in the general section of the final rules but not in the Section 3004 regulations.

Issue #2: Public Availability of Specific Data

Several commenters argued that certain types of information should be made known to the public because public knowledge is essential to the effective enforcement of RCRA. In particular, it was argued that the public oversight and citizen suit provisions of the Act, to be effective, require public knowledge of:

1) information on the types of waste being handled by facilities, especially by landfills;

2) information on the quantities of each type of waste handled by facilities;

3) data from the monitoring of ground water;

4) data from the monitoring of surface water;

5) the type of process generating the waste; and,

6) the hazardous properties of the waste such as specific toxicity information, flammability, and other properites.

Other commenters stated that the Agency should routinely disclose any information reported to the Agency for fires, explosions and releases of hazardous waste, including deterioration of ground water.

Supporting arguments provided by commenters stated that, in the past, facility owners and operators have cited confidentiality as an

excuse to prevent public disclosure of such information in instances where contamination of ground water and surface water have occurred.

Response:

The Agency has sought to balance the public need for information against legitimate claims of confidentiality. With respect to information collected pursuant to Section 3007(a), Congressional guidance, under Section 3007(b) of RCRA, does not authorize full public disclosure of that information, but rather directs the Administrator to consider as confidential that information which would be entitled to protection under Section 1905 of Title 18 of the United States Code, upon a satisfactory showing by the claimant that his information does indeed warrant confidential treatment.

However, with respect to RCRA regulation development and enforcement, Section 3007(b) provides that records, reports, documents, or information claimed to be confidential may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out RCRA, or in relevant proceedings.

The Agenc, generally favors broad public disclosure of RCRA information. However, release of particular information will be decided on a case-by-case basis if claims of confidentiality are made by the waste generator or facility owner or operator. Thus, the Agency believes it is inappropriate to impose in the regulations a

blanket requirement that specific information must be released to the public in all cases.

At the Administrator's discretion, in accordance with the mandate of Section 1006(a) of the Act, the Agency has decided not to collect surface water monitoring data under RCRA regulations. Instead, surface water monitoring will be the responsibility of facilities according to existing authorities governing discharges to surface water under the Clean Water Act.

Information on the type of process producing a waste stream is an element of the system chosen by EPA to list hazardous wastes under Section 3001 regulations. The background documents supporting these regulations in most cases identify specific industrial categories and processes which produce the hazardous wastes listed. These documents are available to the public.

The Agency supports the release of confirmed data on episodes of fires, explosions, and releases of hazardous waste which have the potential for adverse human health and environmental impact as necessary to alert those potentially affected. Special considerations would apply for instances where enforcement proceedings are possible. The notification of local authorities of serious incidents is required under the contingency plan regulations in Part 264, Subpart D.

Issue #3: Use of Generic Terminology

Commenters argued that on-site and off-site disposal facilities handling only one type of waste could have any trade secret

information protected as necessary by the use of generic chemical names, such as generic terminology consistent with regulations implementing Section 5 or Section 8b (Inventory) of the Toxic Substances Control Act (40 CFR 710.7).[16] Other commenters felt that, in appropriate circumstances, the identity of the generator should also be protected as confidential by the Agency.

Response:

The Agency agrees that trade secret information may be protected in some cases by the use of generic terminology. For RCRA purposes, the EPA, in concert with the Department of Transportation, requires the use of DOT's general descriptions pursuant to regulations under 49 CFR 172 for the shipping description required on the manifest. For other records and reports under RCRA Sections 3002 and 3004, as described later, the Agency requires a hazardous waste to be described by its common name and the EPA Hazardous Waste Numbers specified in Part 261. These numbers also relate to general descriptions of the waste. Thus, the generator, either as shipper of wastes or as disposer at the site of generation, can control release of information, which the generator believes to be proprietary, by the use of generic terminology. However, for non-listed hazardous waste, the Agency requires the process which produced the waste to be identified, as well as its name and the EPA Hazardous Waste Number.

The Agency does not agree that waste descriptions must necessarily entail the same standards for confidentiality as used by the

Agency in collecting information on pure chemical substances under TSCA. Most wastes are mixtures of variable composition, often including unknown constituents. Indeed, some commenters argued that off-site commercial facilities handling such waste should have no proprietary stake regarding specific hazardous wastes they handle.

2. Burden of Administrative Requirements

a. Synopsis of Proposed Regulations

The Agency believed that the reporting and recordkeeping required by the proposed Section 3004 regulations, including compliance with the manifest system, were the minimum necessary to effectively regulate owners or operators of hazardous waste facilities. In general, the Agency attempted to eliminate duplicative and unnecessary reporting, and to reduce administrative burdens consistent with obeying the mandate of RCRA Sections 1006 and 3004. Comments were requested on the utility, burden, and practicality of the recordkeeping and reporting requirements.

b. Rationale for Proposed Regulations

Administrative standards under the proposed regulations carried out the Congressional mandate in Section 3004

(1) to maintain records of all hazardous waste which is treated, stored, or disposed of, and the manner in which such wastes were managed; and

(2) to ensure satisfactory reporting, and compliance with the manifest system established under Section 3002 regulations.

c. Comment Analysis and Response

Issue #1: General Burden

A number of commenters expressed general concern that the administrative requirements were excessive, particularly for small firms. The proposed manifest, recordkeeping, and reporting requirements were described as not cost effective and not substantially contributing to human health and environmental protection. One commenter described the manifest and general recordkeeping requirements as releasing a flood of paperwork which would largely go unread and unappreciated.

Commenters described the administrative burden as costly. Others called it unnecessary and impractical, particularly in requiring the various reports and signatures of generators, transporters, and disposal operators. [EPA points out, however, that neither the proposed nor final rules require transporter reports.]

Commenters stated that the paperwork associated with the proposed manifest, recordkeeping, and reporting system would be substantial and duplicative, and would require additional personnel in government and industry to process the necessary paperwork.

Response:

The Agency agrees that the paperwork associated with control of hazardous waste will be substantial. The Agency does not agree, however, with the commenters who suggested that the manifest system, recordkeeping, and reporting proposed under §250.43-5 imposed an unnecessary burden on the regulated community. Numerous past

documented damage cases have resulted from improper waste disposal in part because wastes were not tracked and little liability or responsibility was assigned or accepted by the waste generators, transporters, or disposers. A recent EPA study estimated that just the cleanup costs of past improper disposal practices, which these regulations seek to end, amount to as much as $50 billion.[17] This figure does not include human nor environmental costs. Just one incident, at the Love Canal in New York, resulted in lawsuits claiming more than $2.65 billion in damages.[18] These incidents have been exacerbated by the lack of definitive information concerning the composition and disposition of the wastes. These RCRA manifest, recordkeeping, and reporting requirements are designed to minimize the likelihood of incidents like these occurring again. To the end, the Agency believes that the various records, reports, and signatures of treaters, storers, and disposers are necessary to allow EPA enforcement officials to assign responsibility, and ultimately liability, in cases where problems arise.

To institute needed reforms in hazardous waste disposal practices, among other goals, Congress passed and the President approved the new hazardous waste control program in RCRA. The Act mandates a waste control system expressly including a waste manifest tracking system with associated reporting and recordkeeping.

The Agency does not agree that the resulting paperwork will be duplicative. The Agency has made every effort to eliminate any

duplication and has documented these attempts in the Reports Impact Analysis which was developed internally in response to the President's paperwork reduction campaign.[19] For example, EPA and DOT developed joint regulations and manifest formats for the transportation of hazardous waste to avoid duplicative EPA regulations and paperwork, since much of the information required by EPA on the manifest is also required by DOT. [See Issue #4 below for more discussion on this point.]

EPA points to the use of manifest systems in the States of California, Texas, and Illinois, among others, to show that hazardous waste manifest systems are practical and workable. EPA review of these and other systems is partially described in Appendix I of this document and in the background document for Section 3002.[20]

Detailed study of the costs of the total RCRA interim status administrative cost indicates a cost of about $36 million initially and $40 million annually thereafter.[21] This figure includes all costs of complying with notification, manifest system, recordkeeping, and reporting requirements, as well as other requirements such as inspections and preparing closure and post-closure plans. Considering that an estimated 72,000 installations will be regulated under the program, the Agency does not believe that, for the regulated community in general, the cost of this aspect of the program will be excessive.

The EPA recognizes the potential paperwork burden on small firms. In the final Part 261 regulations, the Agency has defined special requirements for small firms, based upon the amount of waste generated. The exclusion limits are described in the final Part 261 regulations. These exclusions will reduce the paperwork burden on off-site hazardous waste facilities as well, because otherwise they would have had to handle numerous small waste shipments.

EPA believes the final regulations maximize cost-effectiveness by maximizing the self-policing aspects of the system, which is based on return of the manifest to the generator by the facility owner or operator. (See discussion below under §264.71 - Use of Manifest System.) Annual reporting requirements are the minimum necessary for EPA oversight of the program. In addition, this information will be used for trend analysis, analyses of regulation effectiveness, revision of the regulations where required, and to assist development of supplementary guidance documents, among other purposes.

The Agency agrees that additional personnel will be required, both in government and industry, to maintain records and prepare and evaluate reports. As to private industry personnel requirements, EPA feels strongly, in view of documented damage incidents and industry waste management assessment studies, that the added personnel costs are justifiable and indeed legislatively mandated. Nonetheless, EPA has attempted to minimize the need for additional government and industry personnel wherever possible in these rules.

EPA has conducted an overall review of the burden imposed by the hazardous waste rules. Through a process of refinement, this review resulted in reduced reporting and recordkeeping requirements. Full documentation and discussion of the results of this process are included in the final Reports Impact Analysis which the Agency is publishing as a separate background document in support of the final rules.22

Issue #2: Burden on Hospitals

A commenter stated that requirements for a manifest procedure will significantly increase hospital recordkeeping requirements and therefore increase the total number of personnel employed.

Response:

Based upon comments received on the proposed Section 3001 regulations, the number of infectious wastes from hospitals considered to be hazardous wastes has been reduced substantially from that proposed. Further, the Agency has deferred listing infectious wastes as hazardous wastes. Thus, hospitals will have no manifest and recordkeeping burden at the outset of the RCRA hazardous waste program and, ultimately, will have a smaller burden than the commenter contemplated. EPA agrees that additional cost and personnel may be required of hospitals, as well as of other segments of society. However, these requirements are imposed only to the extent needed to comply with the Congressional mandate to protect human health and the environment from improper hazardous waste management practices.

Issue #3: Inapplicability to Continuous Processes

A commenter stated that the manifest and reporting system was generally inappropriate for application to continuous processes in an industrial wastewater treatment plant. The commenter felt the manifest, recordkeeping, and reporting requirements were intended for intermittent and batch treatment and disposal of solid wastes and sludges.

Response:

The Agency agrees that continuous production of sludges and solid wastes at industrial wastewater treatment plants and elsewhere creates the need for a different recordkeeping system than was described under proposed §250.43-5, which envisioned recordkeeping based upon routine use of the manifest. In the final regulations, facilities have the option to use different recordkeeping systems appropriate to operations at their facilities. The concept of the operating log in the proposed regulations has been broadened in the final regulations to be consistent with both an automatic data processing system and continuous recording of unit process operations.

Issue #4: Duplication of Reporting and Recordkeeping Under the Clean Water Act

A commenter stated that RCRA Section 3004 would duplicate reports required now by regulations promulgated under the Clean Water Act, and to be required in the future under regulations currently being developed by EPA to specify Best Available Treatment (BAT) technologies for toxic materials in industrial wastes. In addition,

the commenter stated that such duplication was inconsistent with the Federal government's highly publicized program to reduce redundant paperwork and reporting requirements.

Response:

The EPA disagrees with this comment. First, Congress specifically exempted from RCRA industrial wastewater discharges which are point sources subject to permits under Section 402 of the Clean Water Act, as amended. This exemption is found in RCRA under the definition of "Solid Waste" at Section 1004(27). Second, these final RCRA regulations do not regulate discharges to sewers; these aspects are covered in the pretreatment program under Section 307(b) of the Clean Water Act, as amended.[23] Third, the Agency has not yet issued final BAT guidelines. The Agency will minimize duplication of reporting in the two programs to the extent possible while still satisfactorily complying with the two statutes involved.

Issue #5: Class of Hazard

A few commenters supported the reporting of detailed information on "truly" hazardous wastes as being of value, but added that information is not needed nor would be of value on other wastes.

Response:

The Agency agrees with the concept that information needs could vary with class or degree of hazard of a waste. As noted in the preamble to the final rules, EPA is developing a class of hazard system for technical waste management requirements under Section 3004

regulations. However, the Agency believes the final manifest, recordkeeping, and reporting requirements are the minimum necessary for any hazardous waste, regardless of class of hazard. The Agency anticipates the possibility of adding different recordkeeping and reporting requirements in the future for the classes of highest hazard identified in the new system.

B. §264.70 - Applicability

1. Rationale

This is a new section added to the final rules to explicitly state who is subject to the Section 3004 facility manifest, recordkeeping, and reporting requirements. In the proposed rules, the Agency attempted to group together all generator requirements in the Section 3002 rules. Thus, these proposed rules contained some reporting requirements which applied to on-site treatment, storage, and disposal facilities operated by the generator. Similar rules for off-site facilities were specified in the proposed Section 3004 regulations.

Many commenters were confused as to which set of rules applied to them. To clarify the situation, the Agency in the final rules has consolidated all facility manifest, recordkeeping, and reporting requirements in the Section 3004 regulations. These rules apply to owners and operators of both on-site and off-site facilities, except that manifest-related sections do not apply to owners and operators of on-site facilities that do not accept any waste from off-site sources.

2. Final Rule

§264.70 Applicability

> The regulations in this Subpart apply to owners and operators of both on-site and off-site facilities, except as §264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.
>
> The final interim status standard at §265.70 is essentially identical to the above rule.

C. §264.71 - Use of Manifest System [Proposed as §250.43-5(a)]

1. Synopsis of Proposed Regulations

The proposed regulations prescribed the final steps in the manifest system established in Section 3002 regulations to track hazardous waste from its origin with the generator through its trip with the transporter to its disposition at a treatment, storage, or disposal facility. Owners or operators of facilities which receive waste from off-site were to sign and date the manifest, return a copy of the manifest to the transporter immediately, and return the manifest to the generator within 30 days of receipt of the waste. Owners or operators were also to note discrepancies in type or quantity of waste actually received from that described on the manifest. They were required to notify EPA immediately if discrepancies were discovered.

2. Rationale for the Proposed Regulations

The proposed Section 3004 manifest rules applied only to owners or operators of facilities which receive hazardous waste accompanied by a manifest from off-site sources. The facility owner or operator

was required to sign and date the manifest upon arrival of the waste at the facility in order to verify that the waste had arrived safety at its intended destination. He was required to provide a copy of the signed and dated manifest to the transporter so that the transporter would have a record of delivery.

The Agency believes that the waste generator has primary responsibility to assure safe delivery of his waste to an off-site waste management facility. Consequently, the manifest was required to be returned to the generator because this action completed the information feedback loop, thus assuring the generator that his waste had arrived at the facility to which it was sent. The proposed rules allowed up to 30-days for the facility owner or operator to return the manifest to the generator in order to allow the facility owner or operator to combine return of manifests with monthly billings to generators, thus reducing paperwork and labor and postage costs. If the generator did not receive a properly signed manifest for each waste shipment within 30 days, he was required (in the proposed Section 3002 rules) to make a quarterly exception report to EPA.

The facility owner or operator was required to note discrepancies in type or quantity of waste received, compared to the data on the manifest, to provide a check against bonafide errors and unscrupulous generators or transporters. This is part of the self-policing system mentioned earlier. Discrepancies were to be reported immediately to EPA so that enforcement officials could follow up and rectify any illegal practices found.

3. Comment Analysis and Response

a. General Issues

Issue #1: EPA/State Relationships

Commenters stated that regulations should specify how an accepted State manifest would be integrated with the EPA national manifest system. Another commenter specifically asked if reports were to be sent to both the State and EPA.

Response:

These commenters seem to misunderstand the basic point that the EPA regulations apply only in States that are not authorized by EPA to conduct a RCRA hazardous waste program. Where a State has an on-going program with a manifest system different from the Federal manifest, the State manifest may be used if the State program is authorized under the regulations implementing Section 3006 and the State manifest meets the Federal manifest format requirements. Where the State program is not authorized by EPA, facility owners or operators must use the Federal manifest and send reports to EPA.

The reader is directed to the Section 3002 background document for further discussion.

Issue #2: Universal Manifest

A commenter recommended that a universal manifest accompany each shipment and that the term "delivery document" be deleted from the rules.

Response:

The Agency's detailed response to the question of the use of a universal manifest is contained in the Section 3002 background document. The intent is to specify a "format" rather than a single "form," thus providing flexibility to waste generators to tailor the requirements of the manifest to their own business practices.

In the final Section 3004 regulations, the term "delivery document" has been deleted for purposes of clarity. (See Section 3003 background document.) However, the term "shipping paper" is used for rail or water (bulk shipment) transport to be consistent with Department of Transportation usage. The shipping paper must contain all the information required on the manifest, except the EPA identification numbers, generator's certification, and signatures. 40 CFR 262.23(c) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or water (bulk shipment).

Issue #3: Additional Information on Manifest

Commenters suggested that additional information should be conveyed from the facility owner or operator to the generator using the manifest. One commenter stated that the facility should indicate on the manifest, within 30 days, the fact, method, and date of waste disposal or recovery. Another commenter was more specific and asked that information as to sale of the waste for recovery should be provided to the generator to help limit the generator's future liability in the event of improper disposal.

Response:

The Agency disagrees with these suggestions. The principal purpose of the manifest is to track wastes from the generator to the disposer. The Agency does not believe it should regulate the additional information a generator is to receive from the disposer on the manifest, other than confirmation of delivery. The facility owner or operator is required to record and report to EPA the method(s) of treatment, storage, or disposal of each waste received at the facility. If the generator wishes to receive that information from the facility owner or operator, he can obtain it through channels other than the manifest.

b. §264.71(a)(1) and (b)(1) - Acknowledgement of Shipments [Proposed as §250.43(a)(3)]

Proposed §250.43-5(a)(3) required that the facility owner or operator acknowledge each individual shipment received, and use a special procedure for the acknowledgement of multiple shipments in conformance with §250.22(f) of the proposed Section 3002 regulations.

Issue #1: Multiple Movements

Several commenters requested the deletion of proposed §250.43-5(a)(3) because their comments on proposed §250.22(f) suggested that single manifests for multiple movements should not be allowed. No comments were received on the requirement to acknowledge each individual movement.

Response:

The resolution of this issue is discussed in the background document for Section 3002 under the heading "Multiple Movements - Single Manifest." Multiple waste movements by a single generator during any one day using a single manifest are not allowed in the final Section 3002 regulations. The final Section 3004 rules have been modified to reflect that decision.

Issue #2: Blending of Wastes

A commenter recommended that the Section 3004 manifest procedure specifically address situations where blending of multiple wastes occurs.

Response:

If a generator blends wastes before shipment, only one waste blend would be listed on a given manifest. The facility owner or operator would sign and date the manifest upon receipt of the blended waste. If a transporter were to pick up the same waste from several different generators and blend them together in his truck for ease of transport (as opposed to blending for treatment), a separate manifest would be required from each generator involved. The facility owner or operator would acknowledge receipt of the blended waste by signing and dating each manifest.

If a transporter were to pick up different wastes from different generators and blend them together at the transporter's facility (e.g., a transfer station), that facility would require a permit and

the transporter would also be the facility owner or operator. If the transporter then ships the blended waste onward to another facility, the transporter is also the waste generator, and would have to originate a new manifest.

Issue #3: "Agent" vs. "Authorized Representative"

In the final rules, to be consistent with EPA's NPDES regulations, the term "authorized representative" is defined as the person responsible for the overall operation of the facility, such as a plant manager or superintendent. For the proper use of the manifest system, in EPA's opinion, it is not necessary to require manifests or shipping papers to be signed by a person of such high rank within an organization. Other facility personnel designated by the owner or operator could be authorized to sign manifests or shipping papers without jeopordizing the integrity of the manifest system. Consequently, the proposed term "authorized representative" is replaced in this final rule by the term "the owner or operator, or his agent," with respect to use of the manifest system. However, reports submitted to EPA must be signed by the owner or operator or his "authorized representative," rather than his "agent."

c. §264.71(a)(2) and (b)(2) - Noting Discrepancies

The final rule requires the facility owner or operator or his agent to note significant discrepancies in a movement received in the comment section of each copy of the manifest or shipping paper. A discussion of comments received concerning manifest discrepancies,

and of the meaning of a significant discrepancy, is given below under Section IV.D. (§264.72 - Manifest Discrepancies.)

d. §264.71(a)(3) and (b)(3) - Transporter Copy [Proposed as §250.43-5(a)(1)]

Rationale for Final Rule

Proposed §250.43-5(a)(1) provided that an authorized representative of the facility certify receipt of each waste shipment by signing and dating the manifest, and giving a copy of the manifest to the transporter.

No comments were received on this section of the regulations. However, in response to comments received on proposed Section 3003 regulations, §264.71(b)(3) provides that, for rail or water (bulk shipment) transport, a copy of the signed shipping paper is to be provided to the final rail or water (bulk shipment) carrier. (See Section 3002 background document.)

e. §264.71(a)(4) and (b)(4) - Generator Copy [Proposed as §250.43-5(a)(2)]

Proposed §250.43-5(a)(2) provided that the manifest or delivery document, after it had been signed and dated by an authorized representative of the facility, must be forwarded within 30 days to the generator as certification of receipt of the shipment covered by the manifest or delivery document.

Issue #1: Time Period

Many commenters expressed opinions and desires to either modify or retain the time period for the return of the manifest to the waste generator.

Option 1: Retain 30 Days

A number of commenters supported the proposed 30-day time period allowed for transmitting the manifest as reasonable, and argued its retention to (1) allow an orderly return of manifests, (2) greatly reduce paperwork and the chances of losing one of the manifests, and (3) allow the generator to prepare his reports based on receipt of submittals at expected times rather than a continuous stream of manifests received at varying intervals.

Option 2: Shorten Time Period

A number of commenters requested that the time period be shortened to one or two weeks to (1) allow more effective and timely follow-up on waste shipments, (2) give generators more time to complete exception reports, and (3) avoid loss of documents.

Other commenters suggested that, coupled with a return period of 15 days, the regulations should require the generator to follow up any manifest not returned by the disposer, and notify the Regional Administrator when a shipment cannot be located to provide for earlier detection should something go wrong during shipment.

Option 3: Immediate Return of Manifests

A number of commenters suggested that the time period be made one day because (1) the manifest requires only a signature and date, and immediate mailing would be simple for the disposal facility operator; (2) even with this one-day requirement, manifest turnaround time would be about 10 days; and (3) one-day turnaround was necessary

for effective follow-up by the generator and the EPA on wastes for which manifests are not returned to the generator.

However, some commenters argued against immediate return of manifests by disposers as being unreasonable since time would be needed to check out any discrepancies and record data from the manifest. These commenters felt a shorter return period would not provide any enforcement benefit nor prevent illegal dumping.

Option 4: Extend Period

A commenter recommended that a return time period of 90 days would be more reasonable and workable based upon experience with the California manifest system. Another commenter suggested that the period be extended to allow more time for recording data from each manifest for reporting, but did not suggest a specific time extension.

Response:

After careful review of comments on this issue, the Agency has decided to retain the 30-day time period allowed for return of manifests to the generator, as proposed. The Agency believes a 30-day time period is reasonable and does not preclude returning of manifests within a shorter time period should a generator insist that the facility owner or operator do so.

The final Section 3002 rules provide that the generator must send to the Regional Administrator a letter report (an Exception Report) describing efforts to find each lost manifest, together with

a copy of the manifest for the lost movement, no later than 45 days after the waste is accepted by the initial transporter. While a shorter time period for manifest return might result in better detection should something go wrong during transportation, the Agency believes these incidents will be infrequent. For the great majority of movements, a shorter manifest return time period is not needed and, if imposed, would increase paperwork and labor and postage costs without additional benefit. In the Agency's opinion, the exception reporting requirements established under Section 3002 regulations should adequately address human health and environmental considerations. (See Section 3002 background document for more details.)

The Agency believes that quarterly return of manifests would not provide acceptable protection of human health and the environment for the reasons explained in the Section 3002 background document. Further, return of the manifest to the generator does not preclude preparing facility reports from the facility owner's or operator's copy.

Issue #2: Routing of Manifest Copies

A commenter suggested that facility owners or operators should return manifests to the permitting agency, rather than to the generator, to eliminate the need for exception reports by the generator. Another commenter argued that the regulation should provide flexibility to allow manifests to be returned to either an authorized State agency or the generator. This would allow States to become aware of

exceptions earlier. A related comment argued that States with programs adequate to identify missing movements should have the authority not to require the manifest to be returned to the generator. Another commenter recommended that efforts be made to reduce the number of copies of manifests required to be distributed and retained in order to minimize costs and space requirements.

Response:

The Agency strongly believes that the waste generator, rather than EPA, should be responsible for ensuring that his hazardous waste actually arrives at the intended facility. The manifest routing system is designed to provide the generator with the feedback information necessary to make that determination. While this system may require more copies of manifests to be distributed and maintained than would be the case in other systems, it will result in more timely and effective discovery of errant movements and allow prompt enforcement actions. The rationale for the EPA manifest system is discussed in more detail in the Section 3002 background document.

As noted earlier, the Agency's regulations apply in States that are not authorized to carry out the RCRA hazardous waste program. States with an authorized program will control the manifest system in accordance with their RCRA authorization agreement.

f. §264.71 (a)(5) and (b)(5) - Manifest Retention [Proposed as §250.43-5(b)(6)]

Proposed §250.43-5(b)(6) required the owner or operator of a facility accepting deliveries of hazardous waste from off-site

sources for treatment, storage, or disposal to retain for a period of three years a copy of each manifest or delivery document as certified by the generator, transporter, and owner or operator of the facility. This rule has been moved from the recordkeeping section to the manifest section of the final rule in order to consolidate all manifest-related requirements in one location within the rules.

One commenter stated that all facilities accepting waste should retain all manifests for the duration of the facility's operation rather than for only three years as proposed. In support, the commenter argued that problems at Love Canal surfaced 25 years after the last recorded use of the dump and, therefore, three years is too short a period for recordkeeping, considering the longevity of many hazardous materials and their potential threat to human health and the environment.

Response:

The Agency agrees that records of all hazardous wastes handled should be kept until facility closure. However, the Agency does not agree that all hazardous waste manifests need to be kept on file for that long a period.

The Agency anticipates both short-range and long-range uses for hazardous waste records. Retention of manifests or shipping papers for a three-year period is sufficient for the majority of enforcement cases involving the generation and transportation of hazardous waste,

which are likely to be discovered and acted upon within that period. Thus, the Agency has specified a three-year retention period for manifests or shipping papers in the generator (Section 3002) and transporter (Section 3003) rules, as well as in these rules for facility owners or operators. However, if the owner or operator is the subject of an enforcement action which is unresolved at the time the three year retention period expires, the final rule at §264.74(a) specifies that the owner or operator must retain a copy of each manifest or shipping paper at issue during the course of the enforcement action.

For longer-range uses, such as responding to Love Canal-type situations, the facility recordkeeping rules require owners or operators to retain records (but not necessarily manifests) of all hazardous waste handled until facility closure. The requirement allows the owner or operator the flexibility to design a recordkeeping system suitable to the specific needs of his operation. Larger facilities may use automatic data processing systems. Smaller facilities may choose to retain manifests as the basis for recordkeeping.

In addition, the Agency will receive and retain reports which summarize the waste transported to each facility. These reports will contain a description of the waste, the quantity of the waste, and the EPA identification number of the generator or transporter. Therefore, the Agency will be able to review and summarize the data on the annual reports for a particular facility, should any emergency

or slow release problem arise at a facility after the manifests or shipping papers have been destroyed.

For the reasons given above, the Agency has retained the requirement for facility owners or operators to keep copies of all manifests or shipping papers for at least three years, or until any enforcement action regarding the facility is resolved, whichever is later.

g. Final Rule

The final rule for §264.71 reflects all of the points discussed above, and reads as follows:

§264.71 Use of Manifest System

(a) If a facility receives hazardous waste accompanied by a manifest, the owner or operator, or his agent, must:

(1) Sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received;

(2) Note any significant discrepancies in the manifest (as defined in §264.72(a)) on each copy of the manifest;

(3) Immediately give the transporter at least one copy of the signed manifest;

(4) Within 30 days after the delivery, send a copy of the manifest to the generator; and

(5) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, must:

(1) Sign and date each copy of the shipping paper to certify that the hazardous waste covered by the shipping paper was received;

(2) Note any significant discrepancies in the shipping paper (as defined in §264.72(a)) on each copy of the shipping paper;

(3) Immediately give the rail or water (bulk shipment) transporter at least one copy of the shipping paper;

(4) Within 30 days after the delivery, send a copy of the shipping paper to the generator; however, if the manifest is received within 30 days after the date of waste delivery, the owner or operator, or his agent, must sign and date the manifest and return it to the generator in lieu of the shipping paper; and

(5) Retain at the facility a copy of each shipping paper and manifest for at least three years from the date of delivery.

The final interim status standard at §265.71 is essentially identical to the above.

D. §264.72 - Manifest Discrepancies [Proposed as §250.43-5(a)(4)]

Proposed §250.43-5(a)(4) required the facility owner or operator to notify the generator of any discrepancies, such as differences in the type and quantity of hazardous waste actually received from that described on the manifest or delivery document, by indicating these discrepancies in the comment section of the manifest. In addition, the owner or operator was required to notify the Regional Administrator immediately when such discrepancies were discovered, by forwarding a copy of the manifest or delivery document to the Regional Administrator.

No comments were received opposing the concept of the proposed standard. However, commenters suggested that:

- allowable deviations should be specified
- only "significant" discrepancies should be reported
- a time limit for the discrepancy report should be specified
- discrepancies should be reported to States
- facilities should not accept shipments with discrepancies.

These issues are discussed below in turn.

Issue #1: Specification of Allowable Deviations

Several commenters suggested that an allowable deviation be specified in the regulations. A commenter gave the example that a facility owner should not be required to report the receipt of 4,900 gallons of waste when the manifest shows 5,000 gallons; or a waste received with a pH of 9.1 when the manifest shows a pH of 8.8. Another commenter suggested that an allowable range for deviations might be 1 percent, 2.5 percent, or 5 percent before notification is required. In support, this commenter noted that normal errors by measuring devices or personnel would require notification.

Response:

In response to commenter's requests to define an allowable deviation, the Agency determined that separate provisions should be developed for determing what is a significant difference in terms of waste quantity and type.

Difference in Quantity

One kind of discrepancy is a difference in the waste quantity reported on the manifest or shipping paper and the quantity actually delivered to a facility.

If less than the manifested amount of waste is delivered, the loss of a portion of the waste would be of concern to the Agency. Loss in transit would be reportable, if the result of a discharge, under the final Section 3003 regulations. The likelihood of intentional "midnight" dumping from a vehicle destined for a permitted disposal facility seems low, especially if the waste generator has paid the transporter and disposer separately for transport and disposal of the amount designated on the manifest. Nonetheless, requiring the disposer to note and report discrepancies in waste amounts acts as a check on the transporter.

Those instances where an excess amount of waste is delivered to a facility are not as serious since a facility owner or operator would wish to be paid for the larger quantity of waste actually disposed. As a result, overages should be self-policing.

Scales with the ability to measure the weight of a truckload of bulk waste have a certain limited sensitivity and may not be calibrated with precision. Thus, it seems likely that errors in measurement at the sending and receiving sites, due to use of different scales, could happen often. For example, if the sensitivity of scales for both shipper and receiver were 1 percent, which is a normal value for such scales, measurement of an average shipment of bulk waste could have an error of about 2 percent due to scale accuracy and calibration alone. Other additive errors could be introduced by other factors, such as gasoline or waste evaporation losses during transport, temperature variations, and human error.

Neither the proposed nor final rules, however, require the waste generator or facility owner or operator to have bulk waste weighing scales, such as the truck scales commonly used by State highway patrols, since weighing scales are not appropriate to all waste types or handling situations. In the absence of weighing scales, bulk waste amounts (weight) can be obtained by a combination of volume and specific gravity measurements.

Bulk waste transport trucks and rail cars are of different sizes and shapes. The concensus of four hazardous waste facility operators polled by EPA was that bulk waste volume could be estimated no better than 5 percent, and that a volume error would have to be greater than 5 percent to be noticed routinely. The accuracy of ASTM specific gravity measurement methods is approximately $\pm$ 1 percent for homogeneous materials with no phase separations and assuming no human error. Measurements made by the shipper and receiver routinely could vary by 2 percent. Consequently, bulk waste quantity measurements based on volume and specific gravity commonly could be in error by $\pm$ 7 percent.

In summary, many factors enter into the decision as to setting limits on the variation in amounts of bulk waste which would trigger a discrepancy notation and report. Limits on sensitivity and calibration of weighing scales, as well as possible variations in volume and density measurements, argue for allowing relatively large errors for bulk shipments, such as 5 to 10 percent. Further, the Agency

does not wish to be swamped with discrepancy reports as a result of setting discrepancy limits too tightly.

On balance, the Agency believes it is reasonable to set limits which would not routinely trigger discrepancy findings, but which also do not allow excessive amounts of hazardous waste to be unaccounted for. Further, the Agency believes that many apparent discrepancies can be resolved without Agency intervention (see discussion of following issue). Consequently, for the final rule, the Agency has selected an allowable discrepancy limit of 10 percent in weight of the manifested waste amount, with respect to bulk shipments.

The selected limit does not apply to batch shipments, however. A discrepancy of one drum in a movement would be considered sufficient cause for the facility owner or operator to start follow-up procedures. The Agency decided to apply a different limit to batch shipments, even though the Agency recognizes that the amounts of waste involved can vary considerably, because such discrepancies can be detected easily by a simple count.

Difference in Type

Another kind of possible discrepancy between the waste manifest or shipping paper and the actual shipment is a difference in the chemical or physical nature of the waste.

The Agency's intention in this respect is to have facilities flag obvious differences in waste type, such as waste solvents

received versus waste acids listed on the manifest, and failure to identify toxic contaminants in waste, as opposed to more subtle changes, such as part-per-million variations in the concentrations of heavy metals within a sludge. The Agency wishes to ensure that a facility is properly equipped to handle the wastes received, and not subject to surprises in waste type introduced by mistake or on purpose by waste generators or transporters. Facility waste sampling and analysis requirements (see §264.13) should ensure discovery of obvious waste type differences in most cases.

No comments were received specifically on this point but the Agency has revised the final rules to clarify its intention nonetheless.

Issue #2: Reporting of Significant Discrepancies

Several commenters stressed the importance of requiring only significant discrepancies to be reported, based on the judgment of the owner or operator, arguing that regulatory agencies would be swamped with unnecessary paperwork resulting from the reporting of inadvertent errors or unimportant mistakes.

Response:

The Agency agrees with commenters that the reporting of inadvertent errors or unimportant mistakes is unnecessary. The Agency believes that a distinction should be made between discovering a discrepancy and reporting the discrepancy.

The Agency believes that the logical and reasonable response, upon discovery of a discrepancy in waste amount or type, by the facility owner or operator, is for the facility owner or operator to contact the waste generator, and transporter if necessary, and try to resolve the discrepancy. The discrepancy should be reported to EPA only if it cannot be resolved satisfactorily. In this manner, the number of discrepancy reports can be minimized, and the reports will focus on truly significant discrepancies. The final rules have been written to include this procedure.

Issue #3: Time Period

Several commenters felt that the proposed requirement for immediate discrepancy reporting was too stringent and asked that a time limit to report discrepancies be set, since more time might be needed to determine the existence of a discrepancy. Some commenters suggested that a 10-working-day time limit would make the system more efficient. Other commenters suggested 30 days from receipt of the shipment as a more practical requirement.

Response:

The Agency agrees with the commenters that a time frame (other than immediate) for reporting discrepancies to the Regional Administrator should be specified. All discrepancies should be discovered soon after arrival of the waste at the facility. Discrepancies in amount should be found at the weighing station, if there is one, or waste receiving area before the facility owner or operator or his

agent signs the incoming manifest or shipping paper. Discrepancies in type can be discovered by inspection, in some cases, or by sampling and analysis of incoming wastes, which usually is completed within a matter of hours.

It is expected that the facility owner or operator will attempt to reconcile most potentially reportable discrepancies by telephone conversations with the waste generator or transporter. It should be possible to check records, etc., and provide feedback in a matter of days, even if mailing time is included.

Consequently, the Agency believes discovery and reconciliation of discrepancies, where possible, can be accomplished within 15 days of receipt of the waste at the disposal facility. The final rules, therefore, specify that unresolved significant discrepancies and attempts to reconcile them must be described in a letter report to the Regional Administrator, with a copy of the manifest or shipping paper at issue, within 15 days after receiving the waste.

Issue #4: Alternate Reporting

A commenter suggested that discrepancies be reported to an authorized State agency in the case of a State having an authorized hazardous waste program under Section 3006 of the Act.

Response:

The commenter's request that discrepancies be reported to an authorized State agency indicates a misunderstanding of the hazardous waste regulations.

As noted earlier, the EPA regulations apply in States which are not authorized to carry out the RCRA hazardous waste program. Discrepancy reports would be sent to State agencies, in lieu of EPA, in those States which are authorized. Consequently, the commenter's suggestion has not been adopted in the final rules.

Issue #5: Refusal of Waste with Manifest Discrepancies

A commenter suggested that, if there are discrepancies in the manifest, the hazardous waste should not be accepted until the generator or transporter reconciles the discrepancies.

Response:

The Agency agrees in principle that significant discrepancies in the manifest or shipping paper should be reconciled between the generator or transporter and the disposer. However, the Agency disagrees with the suggestion that the waste not be accepted by the disposer. In the Agency's view, it is more protective of human health and the environment for wastes to be accepted by a responsible disposer, and properly managed while reconciliation is attempted, than for the waste to be rejected with the possibility of its improper disposal elsewhere. In addition, writing such a regulation would conflict with the Agency's decision to allow the disposer to accept unmanifested movements of hazardous waste (see §264.76). Consequently, the suggestion has not been adopted in the final rule. However, the disposer is not obligated to accept the waste if there were a significant discrepancy in quantity or type.

Final Regulatory Language

The final regulation was rewritten for greater clarity and, in keeping with the rationale discussed above, the meaning of a significant discrepancy and the time period for discrepancy reports were specified. Accordingly, the final rule reads as follows:

§264.72 Manifest Discrepancies

(a) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are: (1) for bulk waste, variations greater than 10 percent in weight and (2) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(b) Upon discovering a signficiant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

The final interim status standard at §265.72 is identical to the above.

E. Recordkeeping - General Issues

Proposed §250.43-5(b) prescribed that an owner or operator maintain, as part of the operating log, records of waste managed at the facility, the locations of stored and disposed waste, waste analysis records, monitoring data, summary reports and records of incidents, records or results of visual inspections, records of operating

conditions, and training records. Retention times for various records were proposed as well. Commenters raised a number of general issues regarding recordkeeping at hazardous waste management facilities. These issues are discussed in this section.

Issue #1: Recordkeeping Based on Degree of Hazard

A commenter stated that recordkeeping should be consistent with the degree of hazard of the waste.

Response:

The Agency has incorporated some considerations of class of hazard into the technical regulations, and intends to expand this concept in future rulemaking. However, the Agency does not agree that any great savings in paperwork would be possible under any class or degree of hazard system for recordkeeping because the present recordkeeping system is the minimum acceptable system in the Agency's view. A class or degree of hazard system might, however, require a greater degree and specificity of recordkeeping to take better account of those wastes designated by EPA as more hazardous than "normal" hazardous waste. (See related discussion at IV.A.2., Issue #5.)

Issue #2: Limit Recordkeeping

Some commenters felt that the proposed recordkeeping requirements were too detailed, were unjustified, and would create additional expense without benefits. One commenter felt that the required records should only contain information of potential value in an emergency situation on the site, such as storage or burial locations

for wastes which might cause immediate danger to employees or emergency personnel responding to an incident. The commenter suggested that long-range information of a statistical or maintenance value only should be forwarded to the Administrator for determination as to its value for permanent maintenance, and that any specific records to be maintained should be proposed in the permit application and agreed to at the time a permit is issued.

Another commenter felt that only records of importance in assessing the facility's performance (primarily monitoring data) should be required. This commenter then stated that documentation of personnel training, operating procedures, etc., is not necessary and is an undue burden for a properly operating facility.

Response:

The Agency does not believe that the limited recordkeeping suggested by the commenters would be sufficient to assure meeting the RCRA mandate for protection of human health and the environment. In both the proposed and final rules, the Agency has carefully weighed the burden of recordkeeping against the needs for accurate data associated with human health and environmental protection, and for enforcement of the rules. In the Agency's opinion, each recordkeeping requirement is necessary for these purposes, and is based on lessons learned from improper hazardous waste facility operations in the past. The Agency's proposed and final recordkeeping requirements are closely tied to the operation of the facility, and the burden of the requirements should be minimal at a properly operating facility.

The commenter who suggested forwarding long-range information of a statistical or maintenance value to the Administrator for determination is, in fact, proposing a massive reporting requirement much larger in its impact upon facilities than the annual report required by the final rules. In addition, the requirement suggested by the commenter would result in the accumulation of more information than the Agency will likely be able to use. Therefore, the Agency rejects this suggestion as impractical and unnecessarily burdensome.

The Agency believes that adequate facility recordkeeping is an integral part of proper facility operations. These records may be needed to assist owners or operators in emergency situations, or enforcement officials who may be called upon to investigate problems at any time. However, facility owners or operators will need to meet only those requirements that apply to their facility. The final regulations are designed to allow facilities sufficient flexibility to adapt or extend their present recordkeeping, billing practices, operating logs, and reports to State, local, and other Federal agencies to meet the incremental burden of RCRA. The Agency expects recordkeeping will be included as part of the permit process. During the interim status period, however, owners or operators will be expected to meet all applicable recordkeeping requirements.

Issue #3: Recordkeeping for Nonhazardous Waste

A commenter suggested that records of all waste shipments should be kept in case wastes originally thought to be nonhazardous are determined to be hazardous at a later time.

Response:

The Agency recognizes that facilities which handle hazardous waste may also handle nonhazardous waste. There may indeed be wastes considered as nonhazardous now, but which may be listed as hazardous later. Other wastes may simply be managed as nonhazardous because the generator has not tested them, or because of variations between tested waste and later batches.

To the extent that such situations are deliberate attempts to avoid the law, incident reporting and enforcement inspections will provide a remedy. To the extent that such situations occur in good faith, however, the Agency believes it would be unnecessarily burdensome to impose such a requirement in these regulations.

Issue #4: Congressional Intent

A commenter claimed that the proposed §250.43-5(b) recordkeeping requirements were contrary to Congressional intent because manifests are not required for on-site disposal of hazardous waste, yet the information required to be kept by the proposed regulation was substantially identical to the information on a manifest. Therefore, the practical effect of the proposed regulation (according to the commenter) would be to impose indirectly on facilities recordkeeping requirements which Congress chose not to impose directly.

Response:

The Agency disagrees that recordkeeping at on-site facilities is contrary to Congressional intent. Section 3004(1) of the Act, which

mandates recordkeeping at hazardous waste facilities, makes no distinction between on-site and off-site facilities. The manifest is primarily a waste transport tracking and control document. Recordkeeping requirements for facilities are independent of the manifest, and serve different purposes. It happens that the core information which appears on the manifest (e.g., origin, quantity, and type of waste), is also necessary for recordkeeping purposes.

Issue #5: Exemption from Recordkeeping

A commenter claimed that the proposed recordkeeping requirements should not be required for on-site process-associated incinerators.

Response:

The Agency in the final Section 3001 and 3004 rules has excluded from RCRA Subtitle C control boilers which burn waste as a fuel. An "on-site process-associated incinerator" may qualify for this exemption. (See Section 3001 background document for further details.)

F. §264.73 - Operating Record [Proposed as §250.43-5(b)]

1. Name, Format, and Access to Record

Proposed §250.43-5(b)(1) required a facility owner or operator to keep an operating log, and to open the log for inspection by any duly designated employee or agent of EPA at all reasonable times. A number of commenters raised issues concerning the name, format, and access to the operating log, as discussed below.

Issue #1: Operating "Log" vs. "Record"

A commenter suggested that the proposed term "operating log" be changed to the term "operating record" to allow the use of automatic data processing systems.

Response:

The Agency agrees that the use of an ADP system is consistent with the recordkeeping system flexibility intended by the proposed regulations. Further, the large area of some facilities, and the variety of functions performed at some facilities, make it very unlikely that all required information would be recorded in one operating log at only one location. In writing the proposed rules, the Agency assumed a number of logs, or records, would be maintained at each facility. All such records taken together would then constitute the facility's operating log.

The Agency agrees that the term "operating record" more accurately reflects the Agency's intentions and expected commercial practice than does the term "operating log." The Agency has therefore changed all references in the final regulations from "log" to "record."

Issue #2: Operating Record Format

A commenter requested that EPA include in the regulations an exhibit of an operating log if a particular format is desired. Another commenter requested clarification as to whether separate records are required for each type of waste, each waste shipment, or some other grouping.

Response:

The Agency does not believe a specific format for the operating record is necessary or justified in view of the wide variations possible in activities and types of waste handled at various facilities. Consequently, the Agency has not included an exhibit of an operating record in these final regulations. Separate records are required for each waste type or some other grouping. Records of each waste movement will automatically result from the requirement to keep copies of each manifest or shipping paper received.

Issue #3: Public Access to Operating Record

A number of commenters recommended that the operating record kept by the owner or operator of a facility should be open to State and local officials to ensure proper inspections and to duly represented members of the public, within the bounds of confidentiality, to provide the public with the necessary information to determine the extent and type of public participation appropriate. Another commenter, however, felt all reference to access to the operating record should be deleted as unnecessary.

Response:

The Agency interprets its authority under RCRA as insufficient to prescribe by regulation access by either the public or State and local officials to hazardous waste management facilities. Both EPA and State officials (in States which have authorized RCRA programs) will have access to facilities under the authority of Section 3007(a)

of RCRA. Where States do not have an authorized RCRA program, access to facilities by State officials will be a matter of State law.

The Agency has determined that RCRA does not provide for public access to facilities except to the extent provided for in the public hearing process under the RCRA permit regulations. Through its regulations implementing the Freedom of Information Act, EPA has provided for a degree of public access to information reported to EPA which should allow adequate public knowledge of facility operations. The Agency recognizes that hazardous waste facilities are industrial areas to which access must be controlled by the owner or operator. The broad inspection powers of the Act and the reasonable limits on public release of information have been described in detail earlier under the discussion on "confidentiality."

The Agency has, therefore, specified in the final regulations under §§264.74(a) and 265.74(a) that all records, including plans, must be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of EPA who is duly designated by the Administrator.

Issue #4: Warrantless Inspections

A commenter suggested that the proposed requirement that the operating record be open to any duly designated employee or agent of the Agency authorized warrantless administrative inspections without the consent of the facility's owner or operator. The commenter stated that the United States Supreme Court, in Marshall v. Barlow's,

Inc., 413 U.S. 266 (1978), held that the Fourth Amendment prohibits administrative personnel from conducting warrantless inspections without the consent of the facility's owner or operator. The commenter quoted an EPA Office of General Counsel memorandum which, according to the commenter, directed each program office exercising rights of entry (including the authority of RCRA) to draft regulations governing EPA's entry procedures under RCRA, and directed the Agency to seek consent to enter, and to seek warrants where consent is refused.

The commenter, therefore, recommended that the proposed regulation be amended to require the Agency to seek the consent of the facility's owner or operator before inspecting the operating record, to provide reasonable notice of the Agency's intent to inspect, and to seek appropriate relief should a generator refuse to consent to the inspection.

Response:

EPA's information-gathering activities under RCRA Section 3007 are subject to the Fourth Amendment's protection against unreasonable searches as enunciated by the Supreme Court in Marshall v. Barlow's Inc., supra. It should be noted that the Supreme Court in Barlow's, quoting Almeida-Sanchez v. United States (413 U.S. 266,271), emphasized that

> A central difference between those cases [involving warrantless searches of pervasively regulated industries] and this one is that businessmen engaged in such Federally licensed and regulated enterprises accept the burdens as well as the benefits of

> their trade whereas the petitioner here was not engaged in any regulated or licensed business. The businessman in a regulated industry in effect consents to the restrictions placed on him.

Despite the recommendation of the General Counsel in 1978, EPA has decided not to promulgate regulations implementing Marshall v. Barlow's Inc. That case establishes standards of conduct for Federal officials and enforcement personnel. Therefore, regulations are unnecessary, because internal directives to EPA personnel will suffice. EPA's exercise of its Section 3007 authority will be conducted in a manner consistent with the decision.

Rationale for Final Regulation

EPA maintains that acceptable standards of hazardous waste management necessarily require that a facility maintain an operating record. In addition, the record must be open to inspection by authorized EPA officers, employees, or representatives for enforcement or regulation development purposes. The Agency interprets the term "at all reasonable times" to include the normal operating hours at the facility, but reserves the right to inspect the facility at other than normal operating hours on a case-by-case basis.

For the reasons discussed above, the Agency replaced the term "log" with "record" to clarify the broad variety and dispersion of records that might constitute the operating record of a facility. The Agency changed the term "designated" to "designated by the Administrator" to clarify the official status and responsibilities of officers, employees, or representatives of EPA, which the Agency had

assumed was implicit in the proposed regulations, but may have led to misinterpretation by the regulated community.

2. Content of Operating Record

Synopsis of Proposed Regulation

Proposed §250.43-5(b)(2) required the following information to be promptly recorded and maintained in the operating record until closure of the facility:

a. Waste management information

(1) A description of each hazardous waste

(2) A description of the hazardous properites of each waste

(3) The quantity of each hazardous waste treated, stored, or disposed

(4) The method of treatment, storage, and disposal used for each waste

(5) The dates of treatment, storage, and disposal of each hazardous waste.

b. Locations where waste was stored or disposed

c. Waste analysis information

d. Ground-water monitoring data

e. Summary reports and records of incidents

f. Records and results of visual inspections

Rationale for Proposed Regulation

RCRA Section 3004(1) requires that recordkeeping standards include maintaining records of all hazardous waste identified or listed under Section 3001 rules which is treated, stored, or disposed of, and the manner in which such wastes were treated, stored or disposed.

EPA, therefore, imposed waste management recordkeeping requirements in the Section 3004 proposed rules to comply with RCRA.

The Agency required that the location of stored and disposed waste, and the results of waste analyses, be recorded to allow assessment of any localized problems at storage sites and disposal cells, such as fires, releases, and ground-water contamination. These records can provide information allowing a more effective response to incidents or emergencies.

Recordkeeping requirements for ground-water monitoring data, incidents, and inspections were specified in other provisions of the proposed Section 3004 rules. They were repeated in this rule to ensure that all facility records were maintained in a central location.

Comment Analysis and Response

Commenters raised a number of general and specific points concerning the content of the operating record. These are discussed below in turn.

Issue #1: Use Manifest as the Operating Record

A commenter stated that the majority of the information to be entered into the operating record is information already contained on the manifest, and that needless duplication could be eliminated by requiring only that the facility operator retain a copy of the manifest and that he need not record information contained therein in the operating record.

Response:

Neither the proposed nor final recordkeeping requirements preclude the facility owner or operator from using copies of retained manifests (with suitable notation to show EPA Hazardous Waste Numbers, waste disposition, and location) as part of the operating record. In addition, cross-references to retained manifest copies filed elsewhere are also compatible with the final recordkeeping regulations.

The Agency cannot design a general recordkeeping system that would be suitable for each facility. There exists a tradeoff between the cost of recordkeeping of all manifests for the life of the facility and the cost of generating a new record at the facility for each waste received. The Agency has allowed manifests to be destroyed after three years, but at their discretion facility owners or operators may choose to maintain manifests until facility closure to simplify recordkeeping.

However, on-site disposers do not use manifests. Further, for both on-site and off-site facilities, the operating record must contain other information that is not carried on the manifest. The Agency, therefore, rejects the suggestion that the regulations require retention of the manifest in place of the operating record.

Issue #2: Exempt Incinerators from Recordkeeping

A commenter stated that because incineration destroys hazardous waste, thus eliminating future threat to human health and the

environment, maintaining incineration records until closure of the facility is unnecessary; the commenter therefore recommended that all incinerators be exempted from recordkeeping requirements.

Response:

The Agency believes that recordkeeping for all hazardous waste disposition is required by RCRA. The incineration of hazardous waste may produce hazardous residues or emissions even if most of the waste is destroyed by incineration. Incineration of wastes should be supported by trial burns for which recordkeeping will be necessary for safe management of subsequent batches of similar waste. Further, incineration records are needed to support preparation of annual reports. Consequently, the Agency has maintained recordkeeping requirements for incinerators in the final regulations.

Issue #3: Exempt Treatment and Storage Facilities

A commenter questioned the applicability of the proposed recordkeeping requirements to treatment and storage facilities on the grounds that treatment and storage facilities do not have predetermined closure dates, as would a landfill, and therefore it would constitute an unnecessary burden to maintain such records for an indefinite period of time. For this reason, the commenter recommended exemption of treatment and storage facilities from the recordkeeping requirement.

Response:

Both the proposed and final rules for closure of all facilities, including treatment and storage facilities, require the preparation

of a closure plan which includes the estimated date of closure. Further, a facility permit is issued for a specified period. The Agency believes that records of the operation of storage and treatment facilities must be maintained in order to meet the requirements of RCRA and the technical regulations, and thus has rejected the exemption recommended by the commenter.

Issue #4: Nomenclature for Waste Information

A commenter complained that proposed §250.43-5(b)(2)(i)(A) and (B) were poorly constructed and needed redrafting, with the inclusion of examples, to avoid confusing the reader. The proposed sections at issue concerned the use of DOT or EPA waste descriptions in the operating record.

Response:

The Agency attempted to provide the most cost-effective, flexible, and least burdensome method for recording waste management information. The waste manifest contains much of the information needed. Consequently, the recordkeeping requirements were keyed to manifest information to which management method and date were added. The proposed rules for waste descriptions allowed use of DOT shipping descriptions and DOT hazard classes, as well as EPA waste names and characteristics identified in the proposed Section 3001 rules.

In retrospect, the Agency now believes this was not the best approach. The proposed Section 3004 rules for recordkeeping applied to both on-site and off-site facilities, but separate rules for

on-site facility reporting were contained in the proposed Section 3002 rules. On-site facilities do not use manifests, and thus recordkeeping based on DOT nomenclature is not appropriate for these facilities. This problem has been corrected in the final rules.

To simplify the rules, and to avoid confusion between on-site and off-site facility recordkeeping requirements, the Agency has decided to base all facility recordkeeping and reporting on EPA nomenclature for waste names and characteristics.

The Section 3001 rules define hazardous waste in two ways: (1) by listing specific hazardous waste, and (2) by identifying characteristics of hazardous waste. To simplify the proposed rules further, the final Section 3001 rules assign a four-digit EPA Hazardous Waste Number to each listed waste, and to each hazardous waste characteristic. These numbers must be used to describe hazardous waste for recordkeeping and reporting purposes, along with the waste's common name.

For most listed wastes, the process that produces the waste is identified in the listing, and thus this information is automatically contained within the EPA Hazardous Waste Number assigned to it. This is not the case, however, for nonlisted wastes identified as hazardous via the characteristics. Consequently, the Agency requires for nonlisted waste that the process which generated the waste be recorded and reported, as well as the EPA Hazardous Waste Number.

All of the above points are reflected in the final recordkeeping and reporting rules for hazardous waste management facilities. The

same rules apply to all facilities, whether on-site or off-site. Consequently, the Agency believes the revised waste description rules are more straightforward and less confusing than those proposed.

Issue #5: Quantity Descriptions

Several commenters asked that additional units of measurement for waste quantity be allowed under proposed §250.43-5(b)(2)(i)(C) and elsewhere. One commenter asked that the use of metric units be allowed. Another suggested that cubic feet be allowed since it is a commonly used waste unit. Another commenter suggested that the units of barrels also be allowed since barrels is a common unit of measure.

Response:

The Agency agrees that the use of metric units should be encouraged, and the Agency will use metric units. Other parts of the proposed regulations gave metric equivalents to English units of measurement. The Agency has included metric units in the table of units suitable for recordkeeping and reporting in the final rule.

The proposed and final rules allow owners or operators to record waste quantity in "cubic yards." Although the use of "cubic feet" is also common, it is easy to convert measurements made in "cubic feet" to "cubic yards." Considerations of ADP usage also argue for use of a minimum set of interconvertible units as the basis of recordkeeping and reporting. Therefore, "cubic feet" has not been added to the list of units designated in the final rule.

The use of barrels as a unit of measure, although common in certain industries, would be ambiguous for purposes of waste disposal

records due to the variation in barrel sizes used by waste disposers. Not all barrels that would be reported would be of the same size. Also, barrels may not be full. The Agency has decided that too many inaccuracies could be introduced and thus has rejected the suggestion to include barrels as a unit of measure.

Issue #6: Statistics on Quantities of Waste

A commenter suggested that if EPA needs waste tonnage statistics, EPA should require that copies of manifests be sent to the regional EPA office.

Response:

As previously discussed, EPA has rejected the option of sending copies of manifests to the regional EPA offices. Further, many facilities required to keep records and make reports do not use manifests. Hence, the commenter's suggestion is not practical.

Issue #7: Use of Estimated Quantities

A commenter argued that exact quantity measurements at facilities would not be possible without "costly flow meters and weighing hoppers for which there would be no benefit other than RCRA-required recordkeeping." The commenter argued that estimated quantities would be sufficiently accurate and more cost effective for on-site disposal. Another commenter stated that estimated quantities for on-site waste disposal would be adequate, on the grounds that it would be impractical to weigh every truck. A third commenter stated that specific quantity information cannot be determined by the disposal

facility due to the variations in means of measurement (i.e., tons, barrels, gallons), the inability to measure at the disposal facility, and the inaccuracies of any such measurement. The commenter also argued that the value of the information must be weighed against the added cost and the added exposure and hazard to personnel at the disposal facility while performing the measurement.

Response:

The Agency recognizes the validity of the commenter's arguments indicating the need for a more flexible approach to reporting of quantities. Inasmuch as the Agency has not required waste generators or facility owners or operators to own truck scales or other measurement devices, it seems inconsistent to create a "de facto" requirement by requiring a greater degree of accuracy in measuring wastes than may be necessary. Many off-site facilities use truck scales or other measuring devices for business purposes. Further, Federal and many State transportation rules require accurate weight measurements of off-site movements. Thus, EPA does not believe it is necessary to supplement existing requirements and common business practice with explicit EPA rules in this area.

The Agency recognizes, however, that where no manifest is used, i.e., at on-site facilities, manifest-reported quantities will be nonexistent. The Agency therefore has permitted the use of estimated quantities at on-site facilities as an alternative to manifest-reported quantities in the final rules. Note, however, that the

owners or operators of on-site facilities are required to certify the accuracy of these estimates in their annual reports to the Agency.

Issue #8: Recordkeeping of Waste Location

A number of commenters to proposed §250.43-5(b)(2)(ii) suggested refinements and exemptions to recordkeeping of waste disposal locations. Commenters suggested that cross-references to specific manifest identification numbers should be included when locations are recorded. Other commenters suggested that facilities disposing of a limited number of compatible wastes should not be required to record locations for each type of waste. Another commenter suggested that the volume and nature of the waste should be recorded as well as the location information.

Response:

The Agency agrees that cross-references to specific manifests by using the manifest numbers, where appropriate, would be practical and consistent with such concerns as resource recovery and emergency response and has accordingly incorporated this suggestion into the final regulations.

The commenters who suggested an exclusion for compatible wastes may have misunderstood the level of detail required to record waste locations. The Agency intends waste treatment, storage, and disposal locations to be recorded only on maps or diagrams. Consequently, the Agency believes the exemption suggested by the commenters would unnecessarily complicate the regulation without removing any

significant burden. Further, the Agency believes that the disposal locations of all hazardous wastes should be recorded, whether or not the wastes are compatible, because waste compatibility is only one of many waste characteristics of potential interest at a later time.

The suggestion that volume and nature of the waste be recorded along with the location has been addressed by the inclusion of quantity in the recordkeeping rule, and the requirements for (1) using EPA Hazardous Waste Numbers in recordkeeping, because these numbers relate to the nature of the waste, and (2) recording the results of waste analyses under §264.13 in the operating record.

Issue #9: Waste Analysis Recordkeeping

A commenter suggested that waste analysis recordkeeping required by proposed §250.43-5(b)(2)(iii) was not needed since the information would duplicate that reported to the facility on the manifest. Another commenter suggested that waste analysis should be described as "waste characterization appropriate to the physical state, nature, and management method of the waste."

Response:

The Agency disagrees that manifest information on wastes, such as name, DOT hazard class, and EPA Hazardous Waste Number, would adequately characterize the waste for management purposes at the facility. Further waste analyses are independently required by §264.13 of the final rule. The rule in this section merely requires these waste analysis records to be maintained at the facility.

The term "waste analysis" as it is used in the final regulations at §264.13 is discussed in the waste analysis background document.

Monitoring Data Recordkeeping

No comments were received on proposed §250.43-5(b)(2)(iv).

Issue #10: Incident Recordkeeping

A commenter stated that the words "requiring initiation of a contingency plan, or" should be deleted from proposed §250.43-5(b)(2)(v).

Response:

The commenter did not provide any reasons why recordkeeping of the implementation of a contingency plan should be deleted.

The Agency holds to its rationale for the recording of such incidents as fires, explosions, and releases that require implementing the contingency plan as being important as a record of facility operations and response. Additional rationale is supplied in the background document for contingency plans.

Issue #11: Inspection Recordkeeping

A commenter stated that proposed §250.43-5(b)(2)(iv) should be changed to read "records or results of unusual or unexpected observations made during visual inspections."

Response:

The Agency believes that proof of compliance with the inspection provisions of §264.15 requires a record that the inspections were, in fact, performed, as well as records of unusual or unexpected observations. Therefore, the language of the proposed requirement has been

retained. The retention time for these records has been reduced to three years in the final rule. (See the Inspections background document for further discussion.)

3. Final Rule

Based on the discussions of the above issues, the proposed rules have been revised. The final Phase I Part 264 rules for the content of the operating record read as follows:

§264.73 Operating record

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, torage, or disposal at the facility as required by Appendix I;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was accompanied by a manifest;

(3) Records and results of waste analyses performed as specified in §264.13;

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in §264.56(j);

(5) Records and results of inspections as required by §264.15(d) (except these data need be kept only three years); and

(6) For off-site facilities, notices to generators as specified in §264.12(b).

The final interim status standards make reference to additional sections of Part 265 which are not included in the Phase I Part 264 standards. Accordingly, the final interim status standards of §265.73 read as follows:

§265.73 Operating record

(a) The owner or operator must keep a written operating record at his facility.

(b) The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers, if the waste was acompanied by a manifest;

(3) Records and results of waste analyses and trial tests performed as specified in §§265.13, 265.193, 265.225, 265.252, 265.273, 265.345, 265.375, and 265.402;

(4) Summary reports and details of all incidents that require implementing the contingency plan as specified in §265.56(j);

(5) Records and results of inspections as required by §265.15(d) (except these data need be kept only three years);

(6) Monitoring, testing, or analytical data where required by §§265.90, 265.94, 265.276, 265.278, 265.280(d)(1), 265.347, and 265.377; and

(7) All closure cost estimates under §265.142 and, for disposal facilities, all post-closure cost estimates under §265.144.

G. §264.74 - Availability, Retention, and Disposition of Records [Proposed as §250.43-5(b)(3)]

1. Availability of Records

Several separate requirements for making records available to the Regional Administrator were specified in the proposed rules. In the final rules, these separate requirements are grouped into one general rule, and the separate requirements are deleted. (See related discussions under Section IV.F. - Operating Record.)

2. Retention of Records

Issue #1: Retention of Incineration Records

A commenter to proposed §250.43-5(b)(4) stated that the holding period for incinerator operating records should be reduced to one year, as opposed to three years in the proposed rule.

Response:

The Agency has deferred promulgation of general Section 3004 standards for incinerators until a later date. The Section 3004 interim status standards for incinerators do not require that records be kept of incinerator operating conditions because all existing incinerators may not have the necessary monitoring equipment and it may be impossible to install this equipment without major modifications to the incinerator. Thus, the recordkeeping requirement for incinerator operating conditions in this section of the regulations

has been deferred for the time being. Consequently, it is inappropriate to respond to the commenter's suggestion until the final incinerator rules are promulgated.

Issue #2: Retention of Training Records

A commenter to proposed §250.43-5(b)(5) stated that retention of training records until the closure of the facility seemed excessive, and recommended retention for three years. Another comment asked for deletion of the requirement as unworkable and unnecessary.

Response:

The Agency sought to make clear in the proposed rules that the records of job titles, job descriptions, and training requirements would likely not change over the life of the facility. Thus, once generated, such records would be sufficient with minor changes. The Agency has responded to the commenter's concerns by specifying (in §264.16(e)) that training records of former employees must be kept for at least three years from the date the employee last worked at the facility, but not until closure of the facility.

The Agency does not agree that the recordkeeping requirement proposed was unworkable and unnecessary. Such records document that the training requirements have been met. Therefore, the Agency has retained the training recordkeeping requirement, modified as noted above, but has shifted the requirement to §264.16 of the final regulations.

[Comment: Proposed §250.43-5(b)(6) concerning retention of manifests has been moved in the final rule to the section entitled "Use of Manifest System" at §264.71(a)(5). Comments on the proposed rule were discussed earlier in the manifest section of this document.]

3. Disposition of Records

A commenter stated that the proposed §250.43-5(b)(3) requirement to turn over waste management and landfill disposal location records to EPA upon facility closure could be burdensome in some cases. The commenter noted that, for example, a landfill owner or operator accepting 25,000 truckloads per year over a 20-year period would accumulate records fo 500,000 transactions. The commenter felt it would be more appropriate to turn over these records to EPA on an annual basis.

Response:

The commenter makes a valid point. The Agency will receive the waste management information (waste description, quantity, and management method) on an annual basis via the annual report, and thus it is redundant for the owner or operator to resubmit cumulative records of this information upon facility closure.

In the final rule, the Agency has clarified its intention that locations of treated, stored, or disposed waste are to be recorded on maps or diagrams.

All stored waste is to be treated or disposed of prior to facility closure. Thus, maps of waste treatment and storage locations are required to be maintained during facility operation, but need not be submitted upon proper facility closure. Submission of waste disposal

location maps upon closure should not be burdensome. Consequently, the Agency in the final rule has deleted the requirement for submission of cumulative waste management information to EPA upon facility closure, but has retained the requirement that waste disposal location records be turned over to EPA upon closure.

The Agency has added the requirement to this rule that the records of waste disposal locations also must be turned over to the local land authority upon closure of a disposal facility (see Closure and Post-closure background document for further discussion).

The final rule for availability, retention, and disposition of records reads as follows:

§264.74 Availability, Retention, and Disposition of Records

(a) All records, including plans, required under this Part must be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of EPA who is duly designated by the Administrator.

(b) The retention period for all records required under this Part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Administrator.

(c) A copy of records of waste disposal locations and quantities under §264.73(b)(2) must be submitted to the Regional Administrator and local land authority upon closure of the facility (see § 265.119).

The final interim status standard at §265.74 adds a reference to §265.119 - Notice to Local Land Authority, which is not included in the Phase I Part 264 standards:

§265.74 Availability, Retention, and Disposition of Records

(a) All records, including plans, required under this Part must be furnished upon request, and made available at all reasonable times for inspection, by any officer, employee, or representative of EPA who is duly designated by the Administrator.

(b) The retention period for all records required under this Part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Administrator.

(c) A copy of records of waste disposal locations and quantities under §265.73(b)(2) must be submitted to the Regional Administrator and local land authority upon closure of the facility (see §265.119).

H. General Reporting Issues

Issue #1: Integration with State Programs

Summary of Comments

1. The reporting requirements should be deleted if the State has assumed the responsibility for regulating hazardous waste facilities.

2. In States with authorized programs, the reports should be sent to the applicable State agency, rather than to the Regional Administrator.

3. EPA should be responsible for sending copies of the facility's reports to the officials of the municipality where the facility is located.

Response

The first two commenters apparently did not realize that the proposed rules are Federal regulations which, when promulgated, will apply only to facilities in States which do not have authorized hazardous waste programs. If a State has an authorized program, then the facilities in the State are subject to the reporting regulations

prescribed by the State, and not to the Federal regulations promulgated under Section 3004 of RCRA. Thus, facilities in States with authorized RCRA programs are not subject to any of the reporting requirements specified in the proposed or final rules. For these facilities, owners or operators will be required to submit reports to the director of the State program, who will in turn forward portions of the data collected in these reports to the Regional Administrator.

The Agency agrees that it may be desirable for local officials to be familiar with the information contained in the reports submitted to the Regional Administrator. However, the Agency believes that it is the local officials' responsibility to obtain this information, if desired. The reports submitted to the Agency are available to local officials (pursuant to the Freedom of Information Act), so that any official desiring this information in most cases can obtain a copy of a facility's report by requesting it from EPA.

Issue #2: Joint Filing of Reports

Summary of Comments

1. Firms with more than one site should be allowed to submit reports for all sites.

2. The regulations should allow for an Assumption of Duties Contract between the generator and the facility owner or operator whereby legal responsibility for complying with the reporting requirements can be allocated to the owner or operator.

Response

If a corporate headquarters maintains the records for the various facilities it controls, both the proposed and final rules

allow the firm's headquarters to submit reports for each of its facilities.

The Agency cannot regulate nor prohibit owners or operators from assuming responsibility for the generator's reporting requirements, if owners or operators choose to do so. Contract law provides the appropriate mechanism for owners or operators to assume the generator's reporting requirements. If, however, the generator's contracted duties are not performed, the generator will be held responsible for not complying with the RCRA reporting requirements.

Issue #3: Simplify the Reporting Requirements

Summary of Comments

The reporting requirements are too complicated because there are too many variations (e.g., quarterly vs. annual reporting, on-site vs. off-site management, manifested vs. unmanifested waste, etc.) and too many details. For this reason, the regulations should be revised by reducing the number of variations and eliminating unnecessary details.

Response

The proposed rules contained different reporting requirements under different circumstances because the information which is available and necessary varies in different circumstances. For example, the information which can be readily obtained on manifested waste differs from that obtainable for unmanifested waste (e.g., the name of the generator or the identity of the waste may be unknown in

the latter case). The proposed regulations were designed to reflect this difference in the availability of information.

Similarly, the frequency of the reporting requirements differed in the proposed rules because the Agency's need to readily know about the disposition of waste varies under different circumstances. [Compare the Agency's rationale for the proposed quarterly reporting requirement for unmanifested waste--in Section K.2 of this document--and the rationale for the proposed annual reporting requirement--in Section K, "Frequency of Reports," in the background document entitled "Section 3002 - Standards Applicable to Generators of Hazardous Waste."]

However, the proposed rules have been modified to delete the proposed §250.23(d) requirements for waste managed on-site. Since these requirements were similar to those proposed in §250.43-5(c) for waste managed off-site, the Agency consolidated these requirements in the final rules, so that the final §§264.75-264.77 reporting requirements apply to waste managed both off-site and on-site. The Agency believes that this modification is consistent with the commenter's request for simpler standards.

I. §264.75 - Annual Report

1. Synopsis of Proposed Regulation

The proposed rules required that owners or operators file an annual report summarizing the information contained on the manifests or delivery documents corresponding to the incoming waste received at

the facility during the reporting year. The report was to be sent to the Regional Administrator within four weeks after the closing date of the reporting year, and was to contain the following information:

- the identification code, name, and address of the facility
- the closing date of the reporting year
- the identification code of each generator from which waste was received during the reporting year (for international shipments, the name and address of the generator was also required);
- the name, common code and quantity of each waste received from each generator (the quantity was to be reported in pounds, tons, gallons, or cubic yards)
- the method used to manage each waste
- a statement which certified that the report was true, accurate, and complete

2. Rationale for the Proposed Regulation

Because the proposed reporting requirements for off-site facilities (as prescribed in §250.43-5(c)(5)) were comparable to those for on-site facilities (as prescribed in §250.23(d)), the rationale for the frequency and content of the proposed reporting requirements for both types of facilities is the same. Therefore, refer to the rationale for the proposed reporting requirements of §250.23(d), as described in Section K of the background document entitled "Section 3002 - Standards Applicable to Generators of Hazardous Waste", for the rationale for the proposed reporting requirements of §250.43-5(c)(5).

3. Comment Analysis and Response

Issue #1: Frequency of the Reporting Requirement

The response to the comments suggesting intervals other than that specified in the standard (e.g., quarterly vs. annually) for the filing of the reports to the Regional Administrator, is contained in Section K, "Frequency of Reports," in the background document entitled "Section 3002 - Standards Applicable to Generators of Hazardous Waste."

Issue #2: Applicability of the Standard

Summary of Comments

1. The standard should be deleted because it duplicates the requirements of proposed §250.23.

2. The Agency should clarify that the standard only refers to hazardous waste received off-site and only applies to waste shipments accompanied by a manifest.

Response

The reporting requirements of proposed §250.23(d) only applied to on-site facilities. The reporting requirements of proposed §250.43-5(c)(5), on the other hand, only applied to off-site facilities. Because the two standards applied to different types of facilities, the proposed standards were not duplicative. However, the Agency has consolidated the reporting requirements for waste managed at off-site and on-site facilities in the final Section 3004 rules. Therefore, proposed §250.23(d) has been deleted from the final rules.

The final §264.75 reporting requirements apply to both off-site and on-site facilities. Since manifests are not required for waste

both generated and managed on-site, the final rules do not specify that §264.75 applies only to waste movements accompanied by a manifest.

Issue #3: Submission of Manifests in Lieu of The Annual Report

The response to the comment suggesting the transmittal of manifests, in lieu of the annual report, is addressed in Section K, "Adequacy of Reports", in the background document entitled "Section 3002 - Standards Applicable to Generators of Hazardous Waste".

Issue #4: Delivery Document

Summary of Comments

The phrase "or delivery document" should be deleted from the standard.

Response

The phrase "or delivery document" has been deleted throughout the final RCRA Subtitle C rules. The rationale for the inclusion of the phrase in the proposed rules, and the exclusion of the phrase from the final rules, is contained in the Background Document entitled "Section 3003 - Standards Applicable to Transporters of Hazardous Waste".

Issue #5: Exemptions to Reporting

Summary of Comments

Facilities which treat waste on-site (e.g., neutralization processes) should be exempt from the reporting requirements because the resulting information will be of questionable value.

Response

One of the purposes of the reporting requirements is to enable the Agency to ascertain the quantity and disposition of hazardous waste generated in the United States. In order to develop an accurate accounting of all hazardous waste generated in the country, the Agency must receive reports on all waste managed at all facilities, including waste treated at on-site facilities. Therefore, the Agency rejects the suggestion to exempt from the reporting requirements facilities which treat waste on-site.

Issue #6: Submission of the Annual Report

Summary of Comments

1. The proposed turnaround time of four weeks from the end of the reporting year to the time when the annual report must be submitted to the Agency is too short because:

   - most large firms will require more than four weeks to prepare the annual report;

   - the paperwork burden of the report is so great that the operation of the facility will have to be stopped in order to complete the report if the required turnaround time is only 30 days;

   - four weeks does not allow sufficient time for the return of recent manifests.

2. EPA should provide a standardized form amenable to key punch for annual reporting.

Response

The Agency agrees that more than 30 days may be needed to compile the information needed to complete the facility annual report. The owners or operators of both on-site and off-site facilities may

be generators of hazardous waste sent elsewhere, as well as disposers of hazardous waste. To allow waste generators sufficient time to collect all manifests to file their annual report, the final Section 3002 rules allow 60 days, rather than 30 days, from the end of the calendar year to file the annual report.* In order to be consistent with the reporting requirements for waste generators, and to avoid confusion and unnecessary burden, the deadline for submitting the annual report for waste management facilities has also been extended to 60 days.

The Agency agrees that the report form should be made amenable to key punch in order for the Agency to more readily utilize the data collected on the report forms. Therefore, the report form in the final rules has been designed for this purpose.

Issue #7: Inability of The Owner or Operator to Fill Out Sections of Annual Report Form

Summary of Comments

1. The owner or operator may be unable to fill out the part of the form designating the generator of the waste because this information is protected through State health department confidentiality rulings.

2. The quantity of waste managed at the facility cannot be determined by the owner or operator due to:

   - variations in the means of measurement (e.g., tons, barrels, gallons);

*See Section K, "Frequency of Reports," in the background document entitled "Section 3002 - Standards Applicable to Generators of Hazardous Waste," for a further explanation for the extension of the deadline for returning annual reports at on-site facilities.

- inability to accurately measure at the disposal site; and

- the cost of such measurements in terms of manpower and employee exposure to the waste.

Since the generator is being charged for the quantity of waste designated on the accompanying manifest, it is unlikely that materials listed on the manifest will be diverted.

Response

1. Section 3007(b) of RCRA provides that information obtained under Section 3007(a) authority may be treated as confidential if it

> concerns or relates to trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; [18 U.S.C. §1905]

EPA has protected such information through the regulations of 40 CFR Part 2, which provides that information which companies indicate they wish treated as confidential will be released only if EPA finds, among other things, that the release of this information is not "likely to cause substantial harm to the company's competitive position" [40 CFR §2.208(a)(1)].

Although the Agency does not believe that the identity of the generator would satisfy the above criteria for information to be treated as confidential, EPA's regulations do not prohibit companies from asserting claims for confidentiality for such information.

If a company indicates that it considers confidential the identity of the generator, and EPA finds that this information should not

be protected, then the RCRA requirement that all manifests be signed by the generator will supersede any State regulation which protects the identity of the generator. Because the Agency believes that few such claims for confidentiality will be upheld, the Agency expects that as soon as the RCRA rules become effective, owners or operators will be able to designate the generator of the manifested waste on the report form.

2. See response to Issue #7: "Use of Estimated Quantities" in Section IV.F.2.--"Recordkeeping - Content of Operating Record--of this document.

Issue #8: Units of Measurement

Summary of Comments

1. EPA should allow the use of metric units in reports
2. "Cubic feet" should be added to the list of units designated in the standard

Response

1. The Agency agrees that the use of the metric system should be encouraged, and the Agency will use metric units. Therefore, the final rules have been revised to allow owners or operators to report the quantity of waste managed at the facility by weight in metric units or English units.

2. See response to Issue #5: "Quantity Descriptions" in Section IV.F.2--"Recordkeeping - Content of Operating Record"--of this document.

Issue #9: Additions to the Standard

Summary of Comments

The following reporting requirements should be added to the standard:

1. The volume and type of waste stored at facilities;*
2. The location, volume, and type of waste disposed in secure landfills;*
3. Surface water monitoring data.

Response

Proposed §250.43-5(c)(5)(iii)(E) required owners or operators to report the volume of waste received from each generator. Proposed §250.43-5(c)(5)(iii)(G) required owners or operators to report the method used to treat, store, or dispose the waste received at facilities. Taken together, these two standards required that owners or operators report the volume of each waste stored at facilities. Therefore, the commenters' suggestion to require the reporting of the volume and type of waste stored at facilities was already required in the proposed rules.

Proposed §§250.45-2(b)(3) and 250.43-5(b)(1) required that the location of each hazardous waste be recorded in the facility's operating log. In addition, proposed §250.43-7(1) required that, within

*The commenters also suggested that the reporting requirements for stored and landfilled waste (1 and 2 above) should be submitted quarterly. This aspect of the commenters' suggestions is addressed in Section K, "Frequency of Reports," in the background document entitled "Section 3002-Standards Applicable to Generators of Hazardous Waste."

180 days after completion of closure, owners or operators must submit a survey plat to the local land authority and to the Regional Administrator which indicates the type and location of the hazardous waste disposed of in their landfills. The Agency believes that these requirements provide EPA with adequate access to information regarding the content of hazardous waste landfills, so that the additional reporting requirement suggested by the commenters is unnecessary.

Because the standards prescribed under the Clean Water Act (CWA) already include provisions for the monitoring of discharges to navigable waters, it would be duplicative for EPA to establish surface water monitoring standards under Subtitle C of RCRA for facilities regulated under the CWA. Therefore, because no monitoring requirements for surface water have been included in the final RCRA rules, no reporting requirements for surface water monitoring data have been added to the final reporting standards.

Issue #10: Certification Statement

Summary of Comments

1. The phrase "to the best of my knowledge" should be inserted, and the word "personal" should be deleted, from the proposed certification statement because:

   - the person signing the certification may not have compiled the actual information reported, and thus, will not have personal knowledge of each of the many pieces of information reported.

   - the proposed wording of the statement places the individual who signs the report in the position of being criminally liable for errors beyond his control. In many instances, an error could be made even though there was a good faith effort to submit accurate information.

2. The sentence "I am aware that there are significent penalties for submitting false information, including the possibility of fine and imprisonment" should be deleted from the statement because the sentence is:

   - unnecessary, since it is evident that anyone who knowingly submits a false report to the Federal government is subject to significant penalties.

   - offensive and, therefore, uncalled for.

3. Owners or operators should be required to certify that they have properly disposed of all waste committed to them.

Response

The Agency agrees that the certification statement should reflect, to the extent possible, the signer's personal knowledge of the truth, accuracy and completeness of the submission. The owner or operator or his authorized representative may not have firsthand knowledge of the truth, accuracy, and completeness of the information submitted. Accordingly, the Agency has changed the certification statement on the annual report to require the owner or operator or his authorized representative to state that "based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete." This formulation, adopted from EPA's NPDES regulations, recognizes both the limits of the signer's personal knowledge and the Agency's need for accurate and complete information. It allows the owner or operator to respond on the basis of his belief, but sets forth precisely what the basis of that belief must be.

The Agency disagrees with the commenter's suggestion to delete from the certification statement: "I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment." The Agency included this sentence in the statement to impress upon the signer the necessity for submitting complete and accurate information. The Agency believes that some owners or operators may not realize that the knowing submission of false information to EPA may subject the signer to significant penalties. Therefore, the sentence has been retained in the certification statement in the final rules.

The Agency believes that it is unnecessary to amend the certification statement to include a statement that the owner or operator has properly managed all the waste committed to him. The Agency has designed the Annual Report to be useful for gathering essential information on the activities of persons handling hazardous wastes. This information will be used in implementing the Federal hazardous waste program. Although the Annual Report will prove valuable in developing enforcement strategies and, perhaps, in indicating particular targets for enforcement actions, the Report is not primarily intended or designed as an enforcement tool. Other mechanisms exist which are specifically tailored for enforcement needs. These include unmanifested waste reports filed by the owner or operator and exceptions reports filed by generators.

The certification statement on the Annual Report is intended to impress upon the signer the necessity for providing good information. The statement was drafted to ensure that the signer take serious steps to verify the truth, accuracy, and completeness of the report. Among the information so certified is the signer's statements concerning the quantities of waste handled and their disposition. If he reports that 100 drums of waste X were stored, it is assumed that the 100 drums were stored in accordance with the terms and conditions of his permit. The statement cannot, however, realistically serve as the owner's or operator's voucher that all the waste that he has treated, stored, or disposed of in the past year was handled properly. If EPA learns of improper management, its enforcement action will be based primarily on the improper activities rather than the falsity of the report. To require the suggested certification statement would not increase EPA's information on improper practices, nor would it provide a strong basis for an enforcement action.

4. Final Rule

§264.75 Annual Report

The owner or operator must prepare and submit a single copy of an annual report to the Regional Administrator by March 1 of each year. The report form and instructions in Appendix II must be used for this report. The annual report must cover facility activities during the previous calendar year and must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and ad dress of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste; and

(f) The certification signed by the owner or operator of the facility or his authorized representative.

The final interim status standards at §265.75 references additional sections which are not included in the Phase I Part 264 regulations:

§265.75 Annual Report

The owner or operator must prepare and submit a single copy of an annual report to the Regional Administrator by March 1 of each year. The report form and instructions in Appendix II must be used for this report. The annual report must cover facility activities during the previous calendar year and must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The calendar year covered by the report;

(c) For off-site facilities, the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the year; for imported shipments, the report must give the name and address of the foreign generator;

(d) A description and the quantity of each hazardous waste the facility received during the year. For off-site facilities, this information must be listed by EPA identification number of each generator;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) Monitoring data under §265.94(a)(2)(ii) and (iii), and (b)(2), where required;

(g) The most recent closure cost estimate under §265.142, and, for disposal facilities, the most recent post- closure cost estimate under §265.144; and

(h) The certification signed by the owner or operator of the facility or his authorized representative.

J. §264.76 - Unmanifested Waste Report

1. Synopsis of Proposed Regulation

The proposed standard required that owners or operators file a quarterly report to the Regional Administrator describing hazardous waste received at the facility not accompanied by a manifest or delivery document, unless the waste was not required to be accompanied by a manifest or delivery document because of the generator exemptions provided in proposed §250.29 of the Section 3002 regulations. The quarterly report was to contain the following information:

- the identification code, name, and address of the facility
- the closing date of the reporting year
- the word "unmanifested" in the column entitled "Manifest Document Number"
- the name and address of the generator, if known, or the transporter
- the DOT shipping name, if applicable, or the EPA name (as listed in Subpart A) for the waste

- the quantity of each waste received (the quantity was to be reported in pounds, tons, gallons, or cubic yards)
- a statement which certified that the report was true, accurate, and complete
- an explanation, if known, as to why the shipment was unmanifested

2. Rationale for the Proposed Regulation

The Agency believes that facility owners or operators should be allowed to accept unmanifested hazardous waste. In the Agency's view, it is more protective of human health and the environment for unmanifested hazardous waste to be accepted by a responsible facility and properly managed, than to reject the waste and face the possibility of its improper disposal elsewhere. However, the owner or operator is not required to accept unmanifested hazardous waste.

The Agency wants to have records of how this waste is managed, if it is accepted. Furthermore, because of the uncertainty associated with unmanifested hazardous waste, the Agency wants to know as much as it can about the waste, as soon as possible. Prompt submission of the details regarding unmanifested waste will enable the Agency to ensure that the facility is managing the waste (with which the facility may have limited management experience) in an appropriate manner, and will also allow the Agency to detect any suspicious patterns of unusually high incidences of unmanifested waste in particular areas. Such incidences should be infrequent, since it is illegal to transport hazardous waste without a manifest. The latter

type of information would be helpful in tracking down hazardous waste generators who may be attempting to avoid the system, and would be used by the Agency to develop enforcement actions against the generator.

3. Comment Analysis and Response

Issue #1: Ban/Restrict the Acceptance of Unmanifested Waste

Summary of Comments

1. Facilities should not be allowed to accept unmanifested hazardous waste.

2. Facilities should only be allowed to accept unmanifested waste in severe emergencies.

Response

As explained in the rationale for the proposed rule, the Agency believes that there are legitimate reasons why owners or operators should be allowed to accept this type of waste. If rejected, the waste may be abandoned along the side of a road. The waste must be managed eventually and, thus, should be accepted at facilities.

The Agency agrees that the receipt of unmanifested waste should not be a normal operating procedure. However, the Agency does not agree that unmanifested waste should only be allowed to be accepted in severe emergencies. In the example of the abandonment of waste along a roadside, such an incident may not pose an imminent threat to human health and the environment (since the severity of the situation is dependent upon the character of the abandoned waste), but the Agency believes that it is preferable to transport the waste to

a facility as soon as possible, rather than leave the waste along the side of the road. Therefore, the Agency rejects the suggestion to allow owners or operators to accept unmanifested waste in only severe emergencies.

Issue #2: Delete the Requirement for Unmanifested Waste Reports

Summary of Comments

The requirement should be deleted because:

- it is burdensome, unnecessary, and submitted so infrequently as to make the information of little or no value to the Agency
- the owner or operator will have to run all of the toxicity tests on each shipment in order to determine which shipments are hazardous

Response

The Agency disagrees that the information contained in the reports is useless. The discussion of the rationale for the standard explains why the Agency believes this information is valuable. The Agency recognizes that, in some cases, it may be impossible for owners or operators to identify the source of unmanifested waste received at facilities. Therefore, the final rules have been reworded to specify that this information only has to be reported if it is available. Nevertheless, the waste analysis standards of §264.13 require that owners or operators must obtain sufficient information on the composition and properties of waste received at the facility in order to manage the waste in accordance with the Section 3004 standards. Therefore, although owners or operators may be unable to

identify the source of unmanifested waste received at the facility, they are required to analyze all incoming waste (including unmanifested waste) to the extent necessary to obtain sufficient information to manage the waste in compliance with the Section 3004 standards.

Issue #3: The Frequency of the Requirement

The proposed rules required that reports on unmanifested waste must be filed quarterly. The Agency believed at that time that quarterly reporting of unmanifested shipments of waste provided a reasonable trade-off between the Agency's need to quickly know about this type of waste, and the owner's or operator's desire to operate his facility without having to constantly submit reports to the Regional Administrator.

Commenters suggested that the report to the Regional Administrator should be made annually instead of quarterly, but gave no rationale for this suggestion.

Upon review of this issue, the Agency has decided that unmanifested waste reports should be submitted on a case-by-case basis, rather than quarterly as proposed, or annually as suggested by the commenters. As noted above, submission of these reports should be infrequent, and, therefore, not burdensome. To maximize the usefulness of the reports for enforcement purposes, the reports should be submitted to EPA soon after the manifested waste is received. Therefore, in the final rules, the frequency of the reporting requirement is specified as "within 15 days after receiving the waste."

Small quantities of hazardous waste are excluded from regulation under this Part and do not require a manifest. Where a facility receives unmanifested hazardous wastes, it may be difficult for the facility owner or operator to determine whether an unmanifested waste report should be filed. In such cases, the Agency suggests that the owner or operator obtain from each generator a certification that the waste qualifies for exclusion. Otherwise, the owner or operator should file an unmanifested waste report for the hazardous waste movement.

Issue #4: Applicability of the Requirement

Summary of Comments

The standard should apply only to facilities that receive waste generated off-site.

Response

Since manifests are not required for waste managed on-site, the proposed standard only applies to facilities that receive unmanifested waste generated off-site. This includes on-site facilities which might, in an emergency, accept unmanifested waste generated off-site.

4. Final Rule

§264.76 Unmanifested Waste Report

If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in §263.20(e)(2) of this Chapter, and if the waste is not excluded from the manifest requirement by §261.5 of this Chapter, then the owner or operator must prepare and submit a single copy of a report to the

Regional Administrator within 15 days after receiving the waste. The report form and instructions in Appendix II must be used for this report. The report must include the following information:

(a) The EPA identification number, name, and address of the facility;

(b) The date the facility received the waste;

(c) The EPA identification number, name, and address of the generator and the transporter, if available;

(d) A description and the quantity of each unmanifested hazardous waste the facility received;

(e) The method of treatment, storage, or disposal for each hazardous waste;

(f) The certification signed by the owner or operator of the facility or his authorized representative; and

(g) A brief explanation of why the waste was unmanifested, if known.

The final interim status standard at §265.76 is identical to the above.

K. §264.77 - Additional Reports

1. Synopsis of Proposed Regulations

In addition to the annual and unmanifested waste reporting requirements, §250.43-5(c) of the proposed rules also contained standards which required that owners or operators report:

- fires, explosions, and discharges or releases of hazardous waste immediately, as specified in proposed §250.43-3(c)(i);
- ground-water monitoring data to the Regional Administrator on a quarterly basis, as specified in proposed §250.43-8(c)(4) and (d)(1); and
- before facility close-out or before facility closure to the Regional Administrator, as specified in proposed §250.43-7.

2. Rationale for the Proposed Regulations

The purpose of the regulations was to gather all of the proposed Section 3004 reporting requirements into one section of the regulations so that owners or operators could refer to one place to determine the reporting requirements with which they must comply. The rationale for each of the reporting requirements referenced in proposed §250.43-5(c) is provided in the background documents pertaining to the sections of the proposed regulations in which the referenced standards are contained.

3. Comment Analysis and Response

Issue #1: Reporting Incidents

Summary of Comments:

1. The requirement to report fires, explosions, and discharges should be deleted because it duplicates the reporting requirements prescribed under the Toxic Substances Control Act (TSCA).

2. The phrase "outside the facility" should be inserted in the standard.

Response

The reporting requirements under TSCA apply only to toxic substances. The reporting requirements prescribed under Subtitle C of RCRA apply to waste which is listed or meets the characteristics described in Section 3001 rules. These characteristics include not only toxicity, but also ignitability, reactivity, and corrosivity. Thus, the universe of substances controlled under RCRA overlaps with, but is not identical to, those substances regulated under TSCA.

Therefore, because the reporting requirements prescribed under TSCA are not an adequate substitute for the RCRA reporting requirements, the Agency rejects the commenter's suggestion to delete the standard.

The Agency has adopted the commenter's suggestion by inserting the phrase "outside the facility" in the emergency procedure regulations (see §264.56(d) and the background document on contingency plan and emergency procedures) for reporting incidents which could threaten human health, or the environment, outside the facility. Reports under §264.56(j), however, are required for any incident that requires implementing the contingency plan.

Issue #2: Reporting Ground-water Monitoring Data

Summary of Comments

1. Annual reports of ground-water monitoring data should be sufficient to bring changes evidenced by monitoring to the attention of the EPA.

2. Reporting of routine monitoring should be on an annual basis to reduce the quantity of paperwork associated with the reporting requirements.

3. A semiannual or an annual reporting of monitoring data should be sufficient if variations are reported within seven days of such a finding.

Response

The frequency of reporting requirement for routine ground-water monitoring data has been changed from quarterly to annual reporting in the final rule. Significant variations in such data must be reported within seven days. The response to comments received on this issue is contained in the background document on ground-water monitoring.

Issue #3: Reporting Closeout and Closure of the Facility

Summary of Comments

The standard should be reworded to specify that "owners or operators must notify the Regional Administrator prior to closeout and prior to closure in accordance with the time schedule specified in §250.43-7" because:

- use of the defined terms "closeout" and "closure" will lend more certainty to the meaning of the provision; and
- specific reference to the time schedule will clarify that it is the only portion of §250.43-7 being referenced.

Response

Closure requirements are not included in the Phase I Part 264 regulations. The Agency's response, therefore, applies to the Part 265 interim status standards.

The Agency agrees that use of the term "closure" in the standard lends clarity to the meaning of the provision. Therefore, the standard has been changed accordingly. The term "close-out" is no longer used in any of the Section 3004 standards.

The Agency agrees that, instead of referring to all of the closure standards, the final reporting standards should refer only to the section of the closure standards in which the reporting requirements--and the time schedule--for notification of closure are specified. Accordingly, the final §265.77 reporting standards refer to §265.115 of the final closure standards.

4. Final Rule

§264.77 Additional Reports

In addition to submitting the annual report and unmanifested waste reports described in §§264.75 and 264.76, the owner or operator must also report to the Regional Administrator releases, fires, and explosions as specified in §264.56(j).

The final interim status standard at §265.77 references additional sections which are not included in the Phase I Part 264 regulations:

§265.77 Additional Reports

In addition to submitting the annual report and unmanifested waste reports described in §§265.75 and 265.76, the owner or operator must also report to the Regional Administrator:

(a) Releases, fires, and explosions as specified in §265.56(j);

(b) Ground-water contamination and monitoring data as specified in §§265.93 and 265.94; and

(c) Facility closure as specified in §265.115.

L. Appendices to the Regulation

In order to make the regulations clearer, the Agency in these final rules has moved recordkeeping details to Appendix I of the regulation, and the reporting form and instructions to Appendix II of the regulation. These appendices for Part 265 are more comprehensive than those for Phase I of Part 264, since Part 265 addresses additional provisions not included in the Phase I Part 264 regulations. Otherwise, the two sets of Appendices are very similar. Appendices I and II for Part 265 follow.

APPENDIX I

RECORDKEEPING INSTRUCTIONS

The recordkeeping provisions of §265.73 specify that an owner or operator must keep a written operating record at his facility. This appendix provides additional instructions for keeping portions of the operating record. See §265.73(b) for additional recordkeeping requirements.

The following information must be recorded, as it becomes available, and maintained in the operating record until closure of the facility in the following manner:

Records of each hazardous waste received, treated, stored, or disposed of at the facility which include the following:

(1) A description by its common name and the EPA Hazardous Waste Number(s) from Part 261 of this Chapter which apply to the waste. The waste description also must include the waste's physical form, i.e., liquid, sludge, solid, or contained gas. If the waste is not listed in Part 261, Subpart D, of this Chapter, the description also must include the process that produced it (for example, solid filter cake from production of ----, EPA Hazardous Waste Number W051).

Each hazardous waste listed in Part 261, Subpart D, of this Chapter, and each hazardous waste characteristic defined in Part 261, Subpart C, of this Chapter, has a four-digit EPA Hazardous Waste Number assigned to it. This number must be used for recordkeeping and reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste, the waste description must include all applicable EPA Hazardous Waste Numbers.

(2) The estimated or manifest-reported weight, or volume and density, where applicable, in one of the units of measure specified in Table 1; and

(3) The method(s) (by handling code(s) as specified in Table 2) and date(s) of treatment, storage, or disposal.

TABLE 1

Unit of Measure	Symbol *	Density
Pounds	P	--
Short Tons (2000 lbs)	T	--
Gallons (U.S.)	G	P/G
Cubic Yards	Y	T/Y
Kilograms	K	--
Tonnes (1000 kg)	M	--
Liters	L	K/L
Cubic Meters	C	M/C

* Single digit symbols are used here for data processing purposes.

TABLE 2

HANDLING CODES FOR TREATMENT, STORAGE, AND DISPOSAL METHODS

Enter the handling code(s) listed below that most closely represents the technique(s) used at the facility to treat, store, or dispose of each quantity of hazardous waste received.

1. Storage

S01 Container (barrel, drum, etc.)
S02 Tank
S03 Waste pile
S04 Surface impoundment
S05 Other (specify)

2. Treatment
(a) Thermal Treatment

T06 Liquid injection incinerator
T07 Rotary kiln incinerator
T08 Fluidized bed incinerator
T09 Multiple hearth incinerator
T10 Infrared furnace incinerator
T11 Molten salt destructor
T12 Pyrolysis
T13 Wet air oxidation
T14 Calcination
T15 Microwave discharge
T16 Cement kiln
T17 Lime kiln
T18 Other (specify)

(b) Chemical Treatment

T19 Absorption mound
T20 Absorption field
T21 Chemical fixation
T22 Chemical oxidation
T23 Chemical precipitation
T24 Chemical reduction
T25 Chlorination
T26 Chlorinolysis
T27 Cyanide destruction

T28 Degradation
T29 Detoxification
T30 Ion exchange
T31 Neutralization
T32 Ozonation
T33 Photolysis
T34 Other (specify)

(c) Physical Treatment
(1) Separation of components

T35 Centrifugation
T36 Clarification
T37 Coagulation
T38 Decanting
T39 Encapsulation
T40 Filtration
T41 Flocculation
T42 Flotation
T43 Foaming
T44 Sedimentation
T45 Thickening
T46 Ultrafiltration
T47 Other (specify)

(2) Removal of Specific Compounds

T48 Absorption-molecular sieve
T49 Activated carbon
T50 Blending
T51 Catalysis
T52 Crystallization
T53 Dialysis
T54 Distillation
T55 Electrodialysis
T56 Electrolysis
T57 Evaporation
T58 High gradient magnetic separation
T59 Leaching
T60 Liquid ion exchange
T61 Liquid-liquid extraction
T62 Reverse osmosis
T63 Solvent recovery
T64 Stripping
T65 Sand filter
T66 Other (specify)

(d) Biological Treatment

T66 Activated sludge
T68 Aerobic lagoon
T69 Aerobic tank
T70 Anaerobic lagoon
T71 Composting
T72 Septic tank
T73 Spray injection
T74 Thickening filter
T75 Tricking filter
T76 Waste stabilization pond
T77 Other (specify)
T78-T79 [Reserved]

3. Disposal

D80 Underground injection
D81 Landfill
D82 Land treatment
D83 Ocean disposal
D84 Surface impoundment (to be closed as a landfill)
D85 Other (specify)

Appendix II

EPA Report Form

and

Instructions

EPA U.S. ENVIRONMENTAL PROTECTION AGENCY

HAZARDOUS WASTE REPORT

PLEASE PLACE LABEL IN THIS SPACE

I. TYPE OF HAZARDOUS WASTE REPORT

PART A: GENERATOR ANNUAL REPORT

THIS REPORT IS FOR THE YEAR ENDING DEC.31. 19__

PART B: FACILITY ANNUAL REPORT

THIS REPORT FOR YEAR ENDING DEC. 31. 19__

PART C: UNMANIFESTED WASTE REPORT

THIS REPORT IS FOR A WASTE RECEIVED *(day, mo., & yr.)* __ – __ – 19__

INSTRUCTIONS: You may have received a preprinted label attached to the front of this pamphlet; affix it in the designated space above—left. If any of the information on the label is incorrect, draw a line through it and supply the correct information in the appropriate section below. If the label is complete and correct, leave Sections II, III, and IV below blank. If you did not receive a preprinted label, complete all sections. "Installation" means a single site where hazardous waste is generated, treated, stored, or disposed of. Please refer to the specific instructions for generators or facilities before completing this form. The information requested herein is required by law *(Section 3002/3004 of the Resource Conservation and Recovery Act).*

II. INSTALLATION'S EPA I.D. NUMBER

F | T/A | C 1

III. NAME OF INSTALLATION

IV. INSTALLATION MAILING ADDRESS

STREET OR P.O. BOX (C 3)

CITY OR TOWN (C 4) | ST. | ZIP CODE

V. LOCATION OF INSTALLATION

STREET OR ROUTE NUMBER (C 5)

CITY OR TOWN (C 6) | ST. | ZIP CODE

VI. INSTALLATION CONTACT

NAME *(last and first)* (C 2) | PHONE NO. *(area code & no.)*

VII. TRANSPORTATION SERVICES USED *(for Part A reports only)*

List the EPA Identification Numbers for those transporters whose services were used during the reporting year represented by this report.

VIII. COST ESTIMATES FOR FACILITIES *(for Part B reports only)*

A. COST ESTIMATE FOR FACILITY CLOSURE	B. COST ESTIMATE FOR POST CLOSURE MONITORING AND MAINTENANCE *(disposal facilities only)*
$	$

IX. CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

A. PRINT OR TYPE NAME _____ B. SIGNATURE _____ C. DATE SIGNED _____

EPA Form 8700-13 (4-80)

Please print or type with ELITE type *(12 characters/inch)*.

GSA No. 12345-XX
Form Approved OMB No. 158-R00XX

EPA

U.S. ENVIRONMENTAL PROTECTION AGENCY

FACILITY REPORT – PARTS B & C

(Collected under the authority of Section 3004 of RCRA)

FOR OFFICIAL USE ONLY *(Items 1 & 3)*

1. DATE RECEIVED — - - - 19

2. RECEIVED BY

XVI. TYPE OF REPORT *(enter an "X")* — ☐ PART B ☐ PART C

XVII. FACILITY'S EPA I.D. NO. — G (1) (2 - 13) T/A (14) C (15) 1

XVIII. GENERATOR'S EPA I.D. NO. (16 - 27)

XIX. GENERATOR NAME *(specify)*

XX. GENERATOR ADDRESS *(street or P.O. box, city, state, & zip code)*

XXI. WASTE IDENTIFICATION

LINE NUMBER	A. DESCRIPTION OF WASTE	B. EPA HAZARDOUS WASTE NUMBER *(see instructions)* (28 - 31) (32 - 35) (36 - 39) (40 - 43)	C. HANDLING METHOD *(enter code)* (44 - 46)	D. AMOUNT OF WASTE (47 - 55)	UNIT OF MEASURE *(enter code)* (56)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					

XXII. COMMENTS *(enter information by line number — see instructions)*

EPA Form 8700-13B (5-80)

PAGE ____ OF ____

GENERAL INSTRUCTIONS
HAZARDOUS WASTE REPORT
(EPA Form 8700-13)

IMPORTANT: READ ALL INSTRUCTIONS BEFORE COMPLETING THIS FORM

Section I — TYPE OF HAZARDOUS WASTE REPORT:

Part A: Generator Annual Report

For generators who ship their waste off-site to facilities which they do not own or operate; fill in the reporting year for this report (e.g., 1982).

NOTE: Generators who ship hazardous waste off-site to a facility which they own or operate must complete the facility (Part B) report instead of the Part A report.

Part B: Facility Annual Report

For owners or operators of on-site or off-site facilities that treat, store, or dispose of hazardous waste; fill in the reporting year for this report (e.g., 1982).

Part C: Unmanifested Waste Report

For facility owners or operators who accept for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest; fill in the date the waste was received at the facility (e.g., 04-12-1982).

Section II thru Section IV — INSTALLATION I.D. NUMBER, NAME OF INSTALLATION, AND INSTALLATION MAILING ADDRESS:

If you received a preprinted label from EPA, attach it in the space provided and leave Sections II through IV blank. If there is an error or omission on the label, cross out the incorrect information and fill in the appropriate item(s). If you did not receive a preprinted label, complete Section II through Section IV.

Section V — LOCATION OF INSTALLATION:

If your installation location address is different than the mailing address, enter the location address of your installation.

Section VI — INSTALLATION CONTACT

Enter the name (last and first) and telephone number of the person who may be contacted regarding information contained in this report.

Section VII — TRANSPORTATION SERVICES USED (For Part A reports ONLY)

List the EPA Identification Number for each transporter whose services you used during the reporting year.

Section VIII — COST ESTIMATES FOR FACILITIES (For Part B reports ONLY)

A. Enter the most recent cost estimate for facility closure in dollars. See Subpart H of 40 CFR parts 264 or 265 for more detail.

B. For disposal facilities only, enter the most recent cost estimate for post closure monitoring and maintenance. See Subpart H of 40 CFR Parts 264 or 265 for more detail.

Section IX — CERTIFICATION

The generator or his authorized representative (Part A reports) or the owner or operator of the facility or his authorized representative (Parts B and C reports) must sign and date the certificatic where indicated. The printed or typed name of the person signing the report must also be included where indicated.

NOTE: Since more than one page is required for each report, enter the page number of each shee' in the lower right corner as well as the total number of pages.

FACILITY ANNUAL REPORT
PART B INSTRUCTIONS
(EPA Form 8700-13B)

Facility Annual Report for owners or operators of on-site or off-site facilities that treat, store, or dispose of hazardous waste.

NOTE: Generators who ship hazardous waste off-site to a facility they own or operate must complete this Part B report instead of the Generator (Part A) Annual Report.

IMPORTANT: READ ALL INSTRUCTIONS BEFORE COMPLETING THIS FORM

Section XVI — TYPE OF REPORT

Put an "X" in the box marked Part B.

Section XVII — FACILITY'S EPA IDENTIFICATION NUMBER

Enter the EPA identification number for your facility.

Example:

XVII FACILITY'S EPA I.D. NUMBER												
M	A	D	3	8	3	1	2	6	4	8	7	

Section XVIII — GENERATOR'S EPA IDENTIFICATION NUMBER

Enter the EPA identification number of the generator of the waste described under Section XXI which was received by your facility during the reporting year. A separate sheet must be used for each generator. If the waste came from a foreign generator, enter the EPA identification number of the importer in this section and enter the name and address of the foreign generator in Section XXII, Comments. If the waste was generated and treated, stored, or disposed of at the same installation, leave this section blank.

Section XIX — GENERATOR'S NAME

Enter the name of the generator corresponding to the generator's EPA identification number in Section XVIII.

If the waste was generated and treated, stored, or disposed of at the same installation, enter "ON-SITE."

If the waste came from a foreign generator, enter the name of the importer corresponding to the EPA identification number in Section XVIII.

Section XX — GENERATOR'S ADDRESS

Enter the address of the generator corresponding to the generator's EPA identification number in Section XVIII. If the waste was generated and treated, stored, or disposed of at the same installation, leave this section blank. If the waste came from a foreign generator, enter the address of the importer corresponding to the EPA identification number in Section XVIII.

Section XXI — WASTE IDENTIFICATION

All information in this section must be entered by line number. A separate line entry is required for each different waste or mixture of wastes that your facility received during the reporting year. The handling code applicable to that waste at the end of the reporting year should be reported. If a different handling code applies to portions of the same waste (e.g., part of the waste is stored while the remainder was "chemically fixed" during the year), use a separate line entry for each portion.

Example:

XXI WASTE IDENTIFICATION						
Line No.	A. DESCRIPTION OF WASTE	B. HAZARDOUS WASTE NO.		C. HANDL. CODE	D. AMT.	E. UNIT
1.	Steel finishing sludge	K060	K061	S02	25000	T
2.	Steel finishing sludge	K060	K061	T21	157245	T

Section XXI-A — DESCRIPTION OF WASTE

For hazardous wastes that are listed under 40 CFR Part 261, Subpart D, enter the EPA listed name, abbreviated if necessary. Where mixtures of listed wastes were received, enter the description which you believe best describes the waste.

For unlisted hazardous waste identified under 40 CFR Part 261, Subpart C, enter the description which you believe best describes the waste. Include the specific manufacturing or other process generating the waste (e.g., green sludge from widget manufacturing) and, if known, the chemical or generic chemical name of the waste.

Section XXI-B EPA HAZARDOUS WASTE NUMBER

For listed waste, enter the four digit EPA Hazardous Waste Number from 40 CFR Part 261, Subpart D, which identifies the waste.

For a mixture of more than one listed waste, enter each of the applicable EPA Hazardous Waste Numbers.

Four spaces are provided. If more space is needed, continue on the next line(s) and leave all other information on that line blank.

Example:

XXI WASTE IDENTIFICATION						
Line No.	A. DESCRIPTION OF WASTE	B. HAZARDOUS WASTE NO.		C. HANDL. CODE	D. AMT.	E. UNIT
1.	Steel finishing sludge	K060	K061	T21	2917455	T
		K062	K063			
2.		K064				

For unlisted hazardous wastes, enter the EPA Hazardous Waste Numbers from 40 CFR Part 261, Subpart C, applicable to the waste. If more than four spaces are required, follow the procedure described above.

Section XXI-C HANDLING CODE

Enter one EPA handling code for each waste line entry. Where several handling steps have occurred during the year, report only the handling code representing the waste's status at the end of the reporting year or its final disposition. EPA handling codes are given in Appendix I of this Part.

Section XXI-D — AMOUNT OF WASTE

Enter the total amount of waste described on this line which you received during this reporting year.

Section XXI-E — UNIT OF MEASURE

Enter the unit of measure code for the quantity of waste described on this line. Units of measure which must be used in this report and the appropriate codes are:

UNITS OF MEASURE	CODE
pounds	P
short tons (2000 lbs)	T
kilograms	K
tonnes (1000 kg)	M

Units of volume may not be used for reporting but must be converted into one of the above units of weight, taking into account the appropriate density or specific gravity of the waste.

Section XXII — COMMENTS

This space may be used to explain or clarify any entry. If used, enter a cross-reference to the appropriate Section number.

NOTE: Since more than one page is required for each report, enter the page number of each sheet in the lower right hand corner as well as the total number of pages.

WHERE REQUIRED BY 40 CFR 264 or 265, SUBPARTS F or R, ATTACH GROUND-WATER MONITORING DATA TO THIS REPORT.

UNMANIFESTED WASTE REPORT
PART C INSTRUCTIONS
(EPA Form 8700-13B)

Unmanifested Waste Report for facility owners or operators who accept for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest.

IMPORTANT: READ ALL INSTRUCTIONS BEFORE COMPLETING THIS FORM

For the Unmanifested Waste Report, EPA Forms 8700-13 and 8700-13B must be filled out according to the directions for the Part-B Facility Annual Report except that: (1) blocks for which information is not available to the owner or operator of the reporting facility may be marked "UNKNOWN," and (2) the following special instructions apply:

Section VIII — COST ESTIMATES FOR FACILITIES

Do not enter closure or post-closure cost estimates.

Section XVI — TYPE OF REPORT

Put an "X" in the box marked Part C.

Section XXI-A — DESCRIPTION OF WASTE

Use as many line numbers as are needed to describe the waste.

Section XXI-C — HANDLING CODE

Enter the handling code which describes the status of the waste on the date the report is filed.

Section XXI-D — AMOUNT OF WASTE

Enter the amount of waste received, rather than a total annual aggregate.

Section XXII

COMMENTS

a. Enter the EPA Identification number, name, and address of the transporter, if known. If the transporter is not known to you, enter the name and chauffeur license number of the driver and the State and license number of the transporting vehicle which presented the waste to your facility, if known.

b. Enter an explanation of how the waste movement was presented to your facility; why you believe the waste is hazardous; and how your facility plans to manage the waste. Continue on a separate blank sheet of paper if additional space is needed.

MONITORING DATA

Do not attach monitoring data.

References

1. RCRA Legislative History. In U.S. Code: Congressional and Administrative News. 94th Congress, 2nd Session. Volume 5, 1976. U.S. Congress. House. Report of the Committee on Interstate and Foreign Commerce. House Document 94-1491, p. 26.

2. Ibid, p. 26.

3. Ibid, p. 26.

4. Ibid, p. 26.

5. Ibid, p. 26.

6. U.S. Congress. Congressional Record. House. September 27, 1976, p. H11148.

7. Ibid, p. H11154.

8. Op. Cit., House Document 94-1491, p. 27.

9. Ibid, p. 27.

10. Op. Cit., House Document 94-1491, p. 28.

11. U.S. Environmental Protection Agency. Hazardous Waste Damage Incident Files and Summaries. Public Docket for RCRA Subtitle C. Office of Solid Waste. Room 2101. Waterside Mall. Washington, D.C.

12. U.S. Environmental Protection Agency. Report to Congress: Disposal of Hazardous Waste. Office of Solid Waste Management Programs. Publication SW-115. 1974.

13. Op. Cit., House Document 94-1491, pp. 17 - 23.

14. U.S. EPA. Background Document for 40 CFR Parts 264 and 265, Subparts C and D, Preparedness and Prevention, Contingency Plan, and Emergency Response, April 1980.

15. U.S. EPA. RCRA Subtitle C Section 3002 Draft Background Document. Office of Solid Waste. BD-8. December 15, 1978.

16. U.S. EPA. "Toxic Substances Inventory Regulations". Code of Federal Regulations, Title 40, Part 710.7.

17. U.S. EPA. Office of Solid Waste. "Analysis of Ground Water Contamination Incident In Niagara Falls, New York". Draft Report. Prepared by Fred C. Hart Associates, Inc. Contract No. 68-01-3897. July 28, 1978 and

Wright, A.P., D. Huber, and G.K. Welshans. "National Survey of Hazardous Waste Problems and Associated Clean up Costs", in Hazardous Material Risk Assessment, Disposal and Management. 1979 National Conference. April 25 - 27, 1979. Miami Beach, Florida. Information Transfer, Inc. Silver Spring Maryland. Le Catalog No. 79-67389. pp. 23-29.

18. McNeil, Donald G., Jr. "Emptied Niagara Neighborhood Now Looks Like a Disaster Area". The New York Times, November 22, 1979. p. B4.

19. U.S. EPA. RCRA Subtitle C. Reports Impact Analysis. Draft of March 1979. Office of Solid Waste.

20. RCRA Section 3002 Final Background Document, February 19, 1980.

21. U.S. EPA. Integrated Economic Impact Assessment of Hazardous Waste Management Regulations. Draft Report. Arthur D. Little Inc. for Office of Solid Waste. April 1980.

22. U.S. EPA. RCRA Subtitle C Reports Impact Analysis. April, 1980.

23. U.S. EPA. "General Pretreatment Regulations For Existing and New Sources of Pollution". Federal Register Vol. 43, No. 123. Monday, June 26, 1978, pp. 27736 - 27773.

APPENDIX I

State Regulations - Manifest System, Recordkeeping and Reporting

In recent years, several States have enacted laws and regulations which require various aspects of manifest use, recordkeeping and reporting by hazardous waste management facilities. After review of the California, Louisiana, Minnesota, Texas, and Washington State regulations, the Agency found that many of the concepts and requirements in them were applicable (directly or with modification) to the administrative aspects of the RCRA mandate for use of the manifest system, recordkeeping and reporting at hazardous waste management facilities. This Appendix provides an abstract of selected regulations promulgated by the aforementioned States that influenced the development of the RCRA regulation.

I. MANIFEST SYSTEM

A manifest system is an integral part of the regulatory structure of the hazardous waste management programs in California[1], Louisiana[2], Minnesota[3], Texas[4], and Washington[5]. The regulations promulgated in each of these States require that a manifest or shipping paper/ticket accompany the hazardous waste from the generator of the waste, through the transporter, to a treatment, storage, or disposal facility. Each member (i.e., the generator, transporter, treater, storer, or disposer) of the system is responsible for providing complete and accurate information to the other members of the system via the manifest.

Manifest Discrepancies

Louisiana (§5.4.3) requires that hazardous waste facility operators report any irregularities between the waste actually received and the waste described on the manifest, or any other irregularities to the Department of Natural Resources within five days of receipt of the waste.

Amount of Time Allowed for Facility Owner or Operator to Return Manifest to the Generator

Minnesota and Louisiana are the only States of those reviewed by the Agency that specify a period of time within which the manifest must be returned to the generator. Minnesota (§4.9008) specifies two days after relinquishing possession, or within two days of ultimate disposition, whichever is applicable (this requirement only applies to off-site facilities). Louïsiana requires that facility operators mail the original and final copy to the generator no later than the next working day. The other three States reviewed by the Agency simply require submission of a manifest to the State regulatory agency (California §60235 and Washington - WAC 173-302-260) or to the transporter (Texas §4.03).

II. RECORDKEEPING

Period of Retention of Manifests by the Facility Owner or Operator

In the States surveyed, copies of manifests (or the information on the manifest in the case of California (§60257)) are required to be retained by hazardous waste facility operators for one to five years. The specific periods of retention are given below.

State	Regulation No.	Period of Retention
California	§60259	1 yr.
Texas	§4.03	3 yr. (minimum)
Louisiana	§5.4.3	2 yr. (minimum)
Minnesota	§4.9008	5 yr.

Washington (WAC 173-302-270) requires that disposal site operators retain at least one copy of the manifest at the disposal site. No retention period is specified in Washington's rules.

Other Recordkeeping Requirements

Texas requires on-site disposers of Class I Waste* to maintain records of their on-site disposal activity. These records should include, as a minimum, information regarding the quantity, character, and classification of the waste, and the method and location of disposal (§4.03).

The Texas Technical Guideline entitled, "Records"[6] suggests (i.e., the Guidelines are suggestive rather than regulatory) that a disposer maintain two types of records; (1) Waste Disposal by waste description, disposal method, amount, and location, and (2) Monitoring Data by sample point, date, and analysis.

Operating Record

The Minnesota Pollution Control Agency (MPCA) requires the facility operator--except land disposal facility operators--to maintain a log at the facility site that indicates,

*"Class I Waste" -- All waste materials not classified as Class II or III, normally including all industrial solid wastes in liquid form and all hazardous wastes. (Texas Industrial Solid Waste Management Regulation; Section 1.02 - Definitions.)

(1) the date that each shipment arrived,

(2) the shipment number,

(3) the name of the generator,

(4) the name of the transporter,

(5) the location of the shipment at the facility and,

(6) the date that the hazardous waste was processed, disposed of, or transported from the facility.

The facility operator must submit the log to the Agency (MPCA) upon the request of its Director (§4.9004).

The content of a land disposal facility's "operating record" is slightly different in Minnesota's Rules. A ledger for each cell is required containing the information required in 1, 2 and 3 above and, the amount of each shipment in gallons or tons, and the chemical composition of each shipment of hazardous waste. Facility operators must submit the ledger to the MPCA when each cell is closed, or when requested to do so by the Director of the MPCA.

Records of Waste Location

California requires operators of hazardous waste disposal sites (where solid and hazardous wastes are not commingled) to record on a map the general location and identity of hazardous wastes disposed of at the facility (§60257).

Before accepting any waste for disposal, the Texas Water Quality Board (TWQB) requires owners/operators of new industrial solid waste sites to submit for recordation in the county deed, a decription of the portion of the tract to be utilized for ultimate disposal of

industrial solid waste. Existing facilities were required to submit this information within 180 days of the effective date (December 31, 1975) of that regulation. The owners or operators are also required to identify and submit the TWQB class or classes of waste disposed of, or to be disposed of, and the address of the persons to be contacted for more specific information on the waste (§1.05).

Washington requires that site operators maintain survey records at the site which indicate the exact location and boundaries of each burial trench and evaporation pond. The survey record must contain the following information:

(1) Dimension of the trenches and ponds;

(2) Its relation to the nearest USGS bench mark and monument;

(3) Volume and type of waste buried;

(4) Dates for beginning and completing burial and evaporation operations.

A current copy of this survey record is required to be kept at the county auditor's office (WAC 173-302-270).

III. REPORTING

The regulatory agencies of California (§60259), Minnesota (§4.9004), and Texas (§4.03) require owners or operators of off-site facilities to submit a monthly report which largely consists of either a summary of the information from the manifest, or copies of all manifests received plus a summary.

These States have different reporting requirements for on-site facilities. Minnesota (§4.9004) requires operators to submit the same type of report as operators of off-site facilities, except the reporting interval is quarterly instead of monthly.

California only requires on-site facilities to submit information on disposal activities. Information to be submitted about the waste includes identity, source, chemical composition, weight or volume, physical state, container type, hazardous properties, and methods used to dispose of each waste (§60261).

Texas has no general reporting requirements for on-site facilities (§4.03); only recordkeeping is required. However, on-site disposers of Class I waste may be required to compile an Annual Disposal Summary from their records. If required, this report must be submitted to the Texas Water Quality Board on a date specified by the TWQB's Executive Director.

Louisiana requires owners or operators of all facilities to submit a quarterly report to the Department including manifest numbers and total quantity--by the type--of waste handled (§5.4.3).

Washington requires the operator to send written notification of each manifest to the Department of Ecology at the time of delivery of the waste (WAC 173-302-260).

Additional Reports

Washington (WAC 173-302-330) and Minnesota (§4.9004) require quarterly reporting of monitoring or environmental sampling results

to the applicable State regulatory agency. Washington also requires operators to report telephone and written accounts of any accidents or emergencies (e.g., spills, fire, explosion, or chemical reaction).

Minnesota (§4.9004) requires that facility operators give the MPCA a minimum of 90 days written notice--or 180 days in the case of land disposal facilities--before closing a facility.

Inspection of Records/Reports

Washington (WAC 173-302-330) requires operators to allow any duly authorized representative of the State Department of Ecology, at any reasonable hour of the day, to inspect any records, reports, information, or test results relating to the purpose of its regulations.

California's regulations (§60177) specify that the Director or any duly authorized representative of the State Department of Health may, by appointment, inspect and copy any pertinent records, reports, information or test results relating to the requirements of the hazardous waste regulations. An appointment is not needed for inspection of pertinent records during the facility's business office hours.

Texas requires that all records and shipping tickets be kept readily available for review upon request by the TWQB staff at any reasonable hour (§4.03). The Technical Guideline on Records (No. 8) also suggests that records of waste disposal, and monitoring data be kept readily available for review by the TWQB staff.

Louisiana requires that hazardous waste facility operators maintain file copies of manifests for at least two years for inspection by the Department of Natural Resources (§5.4.3).

References - Appendix I

1. California State Department of Health Hazardous Waste Regulations. Title 22, Division 4. Environmental Health, Chapter 2. Hazardous Waste, Article 6. Requirements for Management of Hazardous and Extremely Hazardous Wastes (Register 77, No. 42-10-15-77).

2. State of Louisiana Department of Natural Resources. Rules and Regulations, Hazardous Waste Management Plan. Mandated by: Act 334 of 1978. Effective: August 1, 1979.

3. Minnesota Code of Agency Rules - Pollution Control Agency (PCA). Identification, Labeling, Classification, Storage, Collection, Transportation and Disposal of Hazardous Waste. State Register, Monday, June 11, 1979 (Effective: June 18, 1979).

4. Texas Water Quality Board Industrial Solid Waste Management Regulation (Board Order No. 75-1125-1). Effective: December 31, 1975.

5. Washington Administrative Code (WAC). Hazardous Waste Regulation. Chapter 173-302. July 12, 1978.

6. Texas Water Quality Board Industrial Solid Waste Management. Technical Guideline No. 8, "Records". Issued May 3, 1976.

APPENDIX II

Use of Generic Nomenclature

This Appendix illustrates generic nomenclature suitable for the description of chemical substances of unknown or variable composition, complex mixtures, and biological materials as might be used by industrial firms who might wish to protect the exact chemical composition of a waste component and yet provide specific information as to the chemical nature of the waste.

GENERIC NOMENCLATURE FOR CHEMICAL SUBSTANCES OF UNKNOWN OR VARIABLE COMPOSITION, COMPLEX MIXTURES AND BIOLOGICAL MATERIALS[1]

Biological materials
.(Animals)
..Animal products
...Amino acids
....Peptides
....Proteins
.....Albumins
.....Caseins
.....Gelatins
.....Hemoglobins
...Enzymes
...Fats and Oils, animal
....Grease
....Lard
....Sperm oil
....Tallow
.....Alkyd resins, tallow
...Fatty acids
...Glycerides
...Waxes
....Wool wax
.....Lanolin
.Microorganisms
..Bacteria
..Fungi
...Yeast
..(Microorganism products)
...Amino acids
....Peptides
....Proteins
...Enzymes
.(Plants)
..Fungi
..Plant products
...Amino acids
....Peptides
....Proteins
.....Glutens
...Carbonhydrates
....Cellulose
....Gumes
....Starch
...Enzymes
...Fats and oils, plant
....Castor oil
.....Alkyd resins, caster oil
....Cocoa Butter
.....Coconut Oil
.....Alkyd resins, coconut oil
....Corn oil
....Cottonseed oil
....Linseed oil
.....Alkyd resins, linseed oil
....Olive oil
....Palm oil
....Peanut oil
....Rape oil
....Safflower oil
.....Alkyd resins, safflower oil
....Soybean oil
.....Alkyd resins, soybean oil
....Sunflower oil
.....Alkyd resins, sunflower oil
....Tall oil
.....Alkyd resins, tall oil
....tung oil
.....Alkyd resins, tung oil
...Fatty acids
...Flavonoids
...Glycerides
....Lecithins
...Humic acids
...Resins
....Balsams
....Copals
....Rosin
.....Alkyd resins, rosin
.....Resin acids and Rosin acids
...Rubber
...Waxes
...Wood products
....Cellulose
....Lignin
....Shellac
....Tannins
....Turpentine
Coal
.(Coking products)
..Coke
..Tar
...Asphalt
...Creosote
...Pitch
...Tar acids
...Tar bases
.(Gasification products)
..Fuel gases
.(Liquefaction products)
..Distillates
..Extracts
..Residues
(Inorganic compounds)
.Alkali metal compounds
..Soaps
.Alkaline earth compounds
.Bases
.Group IIIA element compounds
..Borates
.Group IVA element compounds
..Carbonates
..Carbon black
..Silica gel
..Silicates
..Siloxanes and Silicones
...Silsequioxanes
.Group VA element compounds
..Phosphates
..Polyphosphoric acids
.Group VIA element compounds
..Oxides
..Sulfates
..Sulfides
...Polysulfides
.Halogen compounds
.Helium-group gas compounds
.Group IB element compounds
.Group IIB element compounds
.Group IIIB element compounds
..Rare earth metals
.Group IVB element compounds
.Group VB element compounds
.Group VIB element compounds
.Group VIIIB element compounds
.Group VIII element compounds
Minerals, Ores and Rocks
.Alloys
.Aluminum ores
.Asphalt
.Bentonite
.Copper ores
.Iron ores
.Lead ores
.Molybdenum ores
.Zinc ores
Natural gas
.Hydrocarbons
..Alkanes
..Alkanes
(Organic compounds)
.Acid chlorides
.(Acids)
..Carboxylic acids
...Amino acids
....Peptides
...Fatty acids
....Soaps
...Humic acids
...Naphthenic acids
...Resin acids and Rosin acids
..Sulfonic acids
.Alcohols
..Glycols
..2-Hydroxyethyl compounds
..Phenols
...Tar acids
Aldehydes
.Amides
.Amines
.Anhydrides
.Azo compounds
.Carbohydrates
..Polysaccharides
...Cellulose
...Starch
.Epoxides
.Esters
..Borates
..Carbonates
..Glycerides
..Phosphates
..Polyphosphoric acids
..Silicates
..Sulfates
.Ethers
.Flavonoids
.Group IIIA element compounds
.Group VA element compounds
.Group VIB element compounds
.Heterocyclic compounds
..Imidazole compounds
..Imidazolium compounds
..Pthalocyanines
.Hydrocarbons
..Alkanes
..Alkenes

[1]From Toxic Substances Control Act Chemical Substance Inventory. User Guide. Volume IV, p. 495ff.